

THE GRACE COMMISSION'S PROPOSALS FOR FEDERAL REAL PROPERTY MANAGEMENT*

by Alan M. DiSciullo

I. Introduction

On January 12, 1984, the President's Private Sector Survey on Cost Control (Grace Committee or Commission) formally submitted its final report to President Reagan.¹ This report recommended nearly 2,500 methods by which the federal government could reduce its costs by approximately \$425 billion over a three year period.² The panel, headed by J. Peter Grace, focused its findings on the elimination of governmental waste, the reduction of federal retirement plans and the general classification of federal governmental operations in an organized manner. The Grace Committee found that, if adopted, the recommendations would result in annual savings of \$1.9 billion by year 2000.³ Additionally, if fully implemented, the plan would virtually eliminate the reported federal deficit by the next decade without the need for raising taxes or harming necessary social welfare programs.⁴

The most noteworthy of the Grace Committee's recommendations were its suggestions for bringing civil service and military retirement policies in line with private sector retirement norms.⁵ This would result in potential savings of \$58.1 billion over the next three years.⁶ Further proposals included denationalizing the federal power-marketing administrations, which would create

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¹ N.Y. Times, Jan. 13, 1984, at A14, col. 5.

² *Id.*

³ *Id.*

⁴ *Id.* at A14, col. 1.

⁵ *Id.* at A14, cols. 4-6.

⁶ *Id.*

short-term savings of \$19.8 billion and requiring the military to purchase its commonly used parts and equipment competitively rather than on the present sole-source method which would result in a potential three year saving of \$7.3 billion.⁷ In general, the panel found the major impediments to cost reduction in the federal government were the government's failure to adopt private sector practices in cost control and competitive bidding, the use of outdated government services and computer systems and the presence of congressional interference. The Grace Committee concluded that aggregate savings through the year 2000 would be \$10.5 trillion if all of its recommendations were adopted.⁸ It asserted that the failure to adopt *any* of its proposals would result in a federal deficit of nearly \$2 trillion in the year 2000 with federal spending as a percentage of gross national product rising to 34.4 percent by that year from 24.6 percent in 1983 and 18 percent in 1965.⁹

It is because of these figures that the Grace Commission determined that the adoption or rejection of its recommendations would have a significant impact on federal spending and revenue-raising policies over the next twenty years.

One of the Commission's proposals focused exclusively on the government's leasing, housing and property sales programs. It was developed by the Real Property Management Task Force (RPM) and their suggestions are the basis of this article.

II. Origins of the Grace Commission and the Real Property Management Task Force

The Grace Commission was established by Presidential order on June 30, 1982.¹⁰ The objectives of the Commission were to: (1) identify opportunities for increased efficiency and reduced costs achievable by executive action or legislation; (2) determine areas where managerial accountability could be enhanced and administrative costs improved; (3) suggest short and long term managerial operating improvements; (4) specify areas where further study could be justified by potential savings; and (5) provide

⁷ *Id.*

⁸ *Id.* at A14, col. 2.

⁹ *Id.* at A14, col. 6.

¹⁰ Exec. Order No. 12,369, 47 Fed. Reg. 28,899 (1982) (to be codified at 3 C.F.R. 190 (1983)).

information and data relating to governmental expenditures, indebtedness and personal management.¹¹

The President was to be the only recipient of the panel's findings. No congressional involvement was intended under the order. The order also provided that the "Committee [would be] funded, staffed and equipped by the private sector without cost to the federal government."¹² To accomplish this task, thirty-six separate task forces were organized under the auspices of the Foundation for the President's Private Sector Survey on Cost Control in Washington, D.C.¹³ Each task force was assigned to specific executive departments and agencies or charged with studying functions cutting across the federal government. In their final reports, these task forces made a significant number of proposals for executive, legislative and administrative actions to curtail waste in the federal government.

One such task force was the Real Property Management Task Force (RPM). This group's purpose was to identify changes that could be made to reduce real property management costs in the various executive departments, particularly the General Services Administration (GSA) and the Department of Defense (DOD).¹⁴ The group's task was to examine real property management issues,¹⁵ and to focus on: capital issues, such as land sales and leasing; operational questions, such as service agreements; and military housing. Like the other task forces, the RPM group members conducted interviews with agency officials over the last half of 1982.¹⁶ Individual reports and findings were compiled into a one volume document, the Report on Real Property Management (RPM Report), that was revised and approved by the Commission's Subcommittee for the Full Executive Commit-

¹¹ *Id.*

¹² President's Private Sector Survey on Cost Control, Report on Real Property Management, Preface (1983) [hereinafter cited as RPM Report].

¹³ *Id.* Letter from Chairman of the Real Property Management Task Force to J. Peter Grace (Nov. 5, 1982).

¹⁴ RPM Report, *supra* note 12, at 2.

¹⁵ "Real property" in this context means only improved land and the attendant improvements, in particular, buildings and military bases. Excluded are dams, parks, natural forests, grazing lands, mineral deposits and the outer continental shelf. Management refers to factors such as acquisition, sales, maintenance, operation, space assignment, utilization and leasing. It does not include construction *per se*.

¹⁶ RPM Report, *supra* note 12, at 4.

tee in 1983. The individual task force reports were submitted seriatim to the President during the latter part of 1983 and in January 1984.

III. Recommendations Directed Towards the General Service Administration

A large percentage of proposals advanced in the RPM Report were directed towards the General Service Administration (GSA). The GSA was created when Congress enacted the Federal Property and Administrative Services Act of 1949 (1949 Act).¹⁷ The 1949 Act was passed in response to the tremendous difficulties in acquiring, using, and disposing of real and personal property that burgeoning federal agencies had experienced during World War II.

The 1949 Act centralized essentially all of the operation of managing the federal government's real and personal property, non-personal services and records in the GSA. The GSA was given further authority to centralize and administer operations whenever it believed economies of scale were achievable.¹⁸ Following appointment by the President and approval by the Senate, the Administration of the GSA was also given broad, relatively autonomous authority to determine the extent to which the agency could make policy and delve into operational activities and the degree to which these activities would be delegated to other federal agencies.¹⁹

The GSA's real estate holdings have become extensive. Through its Office of Public Buildings and Real Property,²⁰ the GSA manages a property portfolio valued at approximately \$8 billion.²¹ It controls nearly 250 million square feet of building space (an amount that would completely fill the entire inventory of commercial space in Manhattan, Houston and downtown Los

¹⁷ Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (1979) (codified at 40 U.S.C. § 471 *et seq.* (1979)) [hereinafter cited as the 1949 Act].

¹⁸ *Id.*, § 201 (codified at 40 U.S.C. § 481).

¹⁹ *Id.* §§ 101(b), 106, 109(a), 111(a), 112(a), 201, 202(a)(1), 203, 205(d), 210 (codified at 40 U.S.C. §§ 751, 754, 756, 759-60, 481, 483-84, 486).

²⁰ The Office of Public Buildings and Real Property is divided into five sections: 1) Building Management, 2) Real Property Contracts, 3) Real Estate, 4) Design and Construction, and 5) Federal Protective Service.

²¹ RPM Report, *supra* note 12, at i.

Angeles) either through ownership or by lease. GSA's utility and fuel payments during the past fiscal year ran about \$224 million and its annual expenditures for janitorial services exceeded \$190 million.²² GSA's rental payments in the current fiscal year are expected to reach almost \$780 million and will soon top \$1 billion.²³

Property-related expenses of the Department of Defense, the largest single user of federal real estate, are similarly extensive. Aggregate property use and maintenance costs of the Department exceeded \$7 billion in the last fiscal year.²⁴ The joint services have also been spending approximately \$100 million annually on new construction.²⁵

IV. Proposals by the Grace Commission for Reforming Real Property Management

A. Administrative Reorganization

The Grace Commission recommended sweeping reforms for clarifying federal property management goals, improving data collection and information flow, implementing an effective management plan and eliminating the present duplication between the GSA and its agency "tenants".²⁶ About \$62 million of cost savings over three years could be attained without disrupting the present organizational scheme if these recommendations were adopted.²⁷ Notwithstanding its praise for the GSA staff, the Committee found serious problems in the agency, particularly in the inability of its present information system to provide data on space assignments, intensity of space utilization and vacancy and rental rates for GSA controlled space.²⁸ In this respect, the RPM report only reiterated prior findings of both the GSA Inspector General and the General Accounting Office (GAO).²⁹

²² *Id.*

²³ *Id.* *Public Buildings Service Management Plan for FY82-88*, Vol. 1, Facilities Plan, Feb. 16, 1982 [hereinafter cited as the Facilities Plan].

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.*

²⁸ *Id.* at 14.

²⁹ *Id.* GSA Report 4G-00504-11-11 (March 27, 1981) at p. 3: "GSA cannot effectively manage leased or government owned buildings because it has no way of

In order to eliminate the existing duplication of functions and to clarify the GSA's mission, the Commission proposed that the President order the Office of Management and Budget (OMB) to examine the areas where such duplication exists between GSA and other federal agencies. This would eliminate overlapping staff functions.³⁰ Staff functions which the OMB deemed essential to providing management services for any special agency needs would not be eliminated.³¹ The RPM Report suggested vague goals for federal real property management.³² The Report further stated that such goal determinations would be strengthened if issued in the form of an Executive order.³³

The RPM Report found inadequacies in the GSA's management information systems which in turn curtail the agency's overall mission.³⁴ For example, many of the shortcomings in the most recent plan were attributable to the unreliable and inaccurate data contained in the plan. The RPM Report concluded that these deficiencies stem from the absence of full cooperation between the GSA and its "tenant" agencies and from inappropriate computer hardware and software systems.³⁵ While the latter deficiency may be remedied through agency directive, solving the former problem, along with establishing complete federal real property management, is best remedied through an Executive order.

B. *Governmental Leasing*

One of the most significant functions of the GSA is leasing and managing federally owned or occupied office space.³⁶ The

knowing how much space is under its control, how much is assigned or how much is available for occupancy."

These findings were also confirmed in the GAO's investigations published in GAO Report PLRD-72-18, at 23.

³⁰ *Id.* at 20.

³¹ *Id.*

³² *Id.* at 19.

³³ *Id.*

³⁴ *Id.* at 17.

³⁵ *Id.* See for example, the Facilities Plan, *supra* note 23 and GSA Report 4G-00504-II-II, *supra* note 29.

³⁶ *Id.* at i. This power was granted through the 1949 Act, *supra* note 17 particularly the 1972 Amendments and the Public Buildings Act of 1959.

Public Building Amendments of 1972, Pub. L. 92-313, 86 Stat. 216 (1976). See Section 3 of the 1972 Amendments at 1972 U.S. CODE CONG. & AD. NEWS, (86 Stat.)

Administrator of the GSA has extensive power to acquire buildings for governmental use by purchase, exchange, condemnation or donation, and to lease office space for periods of up to 20 years.³⁷ In order to facilitate the acquisition, purchase and construction of office buildings, the Federal Building Fund was established to underwrite GSA's acquisition program.³⁸ The incentive for using this program is the GSA's recent policy of reducing the amount of space it leases over the next decade in favor of placing federal agencies in property owned by the federal government. The GSA expects to derive substantial rental and occupancy cost savings by increasing the use and volume of federally-owned property.³⁹

The federal government has enormous space needs. As of the last year accurate figures were available, fiscal year (hereinafter FY) 1981, GSA had leases on approximately 86 million square feet of building space which housed 417,000 federal employees.⁴⁰ For FY-1983, the GSA had new obligational authority to spend \$770 million for space rental and this figure is expected to reach \$1 billion by FY-1985.⁴¹

GSA's long term leasing goal is to significantly increase the ratio of federal employees in government owned space to those in leased space.⁴² In FY-1982, 53% of government employees worked in owned space.⁴³ By FY-1994, GSA aims to increase this

258-59, which amended Section 210 of the 1949 Act by establishing "a fund . . . for expenditure for real property management and related activities." See 1972 U.S. CODE CONG. & AD. NEWS, (86 Stat.) 2370 *et seq.* for legislative history of the Amendments.

Act of Sept. 9, 1959, Pub. L. 86-249, 73 Stat. 480 (codified as amended, 40 U.S.C. §§ 606-616) (1959)).

³⁷ 1949 Act, *supra* note 17; Public Building Amendments of 1972, Pub. L. No. 92-313, 86 Stat. 216 (1972); Act of Sept. 9, 1959, Pub. L. No. 86-249, 73 Stat. 480 (codified as amended at 40 U.S.C. §§ 606-616) (1959)).

³⁸ Act of June 16, 1972, Pub. L. 92-313, 86 Stat. 219 (codified as amended at 40 U.S.C. §§ 602(a), 603 n. 175 (1972)).

³⁹ See generally Facilities Plan, *supra* note 23, at 20-29.

⁴⁰ Revision of GSA's Leasing Policies and Procedures Issue Report No. Prop. 5 at 70.

⁴¹ RPM Report, *supra* note 12, at 83. See also General Accounting Office "More Effective Leasing Procedures and Practices Could Help GSA Reduce Delays in Meeting Federal Space Needs." May 10, 1982. (PLRD-82-46) [hereinafter cited as GAO Report].

⁴² RPM Report, *supra* note 12, at 83.

⁴³ *Id.*

percentage to 86%.⁴⁴ This plan would require cutting leasing obligations by an average of 15% per year through FY-1987.⁴⁵ GSA expects to finance this shift to government-owned space through the Federal Buildings Fund, subsidized, in large part, from the standard lessee user charges (SLUC) paid by the agency tenants on government-owned property.⁴⁶

1. Present Procedures

During the period this acquisition program is implemented, the government will continue to have substantial leasing needs. Therefore, it is necessary to review current methods for leasing space. Presently, GSA has two methods.

The first involves leases for space under 10,000 square feet. These have been designated as the "fast track" program because of expected lease executions within 60 calendar days from the GSA's receipt of the space request.⁴⁷ These leases constitute 75% of all of GSA's total lease volume but less than 20% of its rental budget.⁴⁸ The second method for obtaining a lease is the situation where space needs exceed 10,000 square feet, and this requires the use of a formal solicitation for offer (SFO).⁴⁹ The SFO is a bulky, 50-75 page printed document with detailed construction, lease, maintenance and other provisions.⁵⁰ Generally

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 84. The Standard Level User Charges (SLUC) are space use and service charges in government owned property authorized by the GSA Administrator. The Administrator is allowed to change periodically the use rates although the statute mandates that these charges approximate commercial charges for comparable buildings and services. An exception is made for government leased buildings where the SLUC is fixed by the Administrator to recover only alteration costs. Under the statute, the Administrator is empowered to exempt anyone from the SLUC fees where he determines such charges are infeasible or impractical. However, to the extent that the exemption is granted, appropriations to the GSA are authorized to reimburse the fund for any lost revenues. Receipts to the fund are made available for federal real property management, but only to the extent specified in an appropriation act, thus giving Congress surveillance over real property management programs. Unexpended balances are, in certain instances, transferred to a new fund to finance completion of previously authorized real estate projects. 40 U.S.C. § 490j (1972).

⁴⁷ RPM Report, *supra* note 12, at 83-4.

⁴⁸ *Id.* From GSA produced printout "Active Lease Central Inventory Effective Report" dated August 31, 1982.

⁴⁹ RPM Report, *supra* note 12, at 84.

⁵⁰ *Id.*

there is little negotiation on the document. Instead, the SFO is usually presented to potential landlords in much the same manner a construction bid is offered and awarded.⁵¹

Several government studies have sharply criticized GSA's administration of its leasing policy.⁵² These critiques have focused upon the length of time expended to approve leases and the requirements and impediments that raise the cost of the government's space use. A prime source of irritation to both critics and the Commission has been the criteria for handling large space requirements. Presently, leases involving an average annual expenditure exceeding \$500,000 fall under the purview of section 7(a) of the Public Buildings Act of 1959.⁵³ This provision requires that the GSA identify these large leases in a formal prospectus and then submit it to the Public Works Committees of both houses of Congress for final approval.⁵⁴

Normally, these leases take between one and one-half to two years to wind their way through the formal approval process. During this time, space needs and prices can drastically change. In the past, action on a large number of leases had been delayed beyond the expected two year approval period. As a result space needs remained unfulfilled and often the prospectus had to be resubmitted because the initial application grossly underestimated the existing market rents at the time the lease was to be-

⁵¹ *Id.*

⁵² See "An Approach to Improving GSA's Leasing Program," March 1, 1982 (9 B-12047-50-11) and the GAO Report, *supra* note 41.

⁵³ General Services Administration, *Acquisition of Leasehold Interests in Real Property* (1981), at 2.

⁵⁴ *Id.* at 7. Almost 98 leases fall into this category for FY83-87.

The Public Buildings Act, 40 U.S.C. § 603 (1972) states, in pertinent part, that: In order to insure the equitable distribution of public buildings through the United States . . .

No appropriation shall be made to lease any space at an average annual rental in excess of \$500,000 for use by public purposes if such lease has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively. For the purpose of securing consideration for such approval, the Administrator shall transmit to Congress a prospectus of the proposed facility, including (but not limited to) —

(l) a brief description of the building to be constructed, altered, purchased, acquired, or the space to be leased under this Act; . . .

The \$500,000 thresholds were added in the 1972 amendments to the Public Buildings Act.

come effective. Additionally, delays in approving prospectuses have resulted in expensive holdover tenancies occurring after the expiration of regular lease terms. As recently as 1980, holdover tenancies were epidemic, having risen to 184 leases from 119 the previous year.⁵⁵ In FY-1982, GSA withdrew ninety-nine prospectuses, some submitted as long as two years earlier, because they had to be updated.⁵⁶

There are a number of other categories of government contracts which are subject to the prospectus requirement. The same requirements are imposed upon contracts that exceed \$500,000 for alterations, repairs, remodeling, improvements and extensions in a public building.⁵⁷ The Grace Commission found the same problems of delays, lost deals, and underestimated prices which existed in the leasing agreements also existed in these contracts.⁵⁸ The Commission also noted that there was a growing number of landlords, owners and contractors who were unwilling to contract with the government because of the problems they had experienced with the GSA in obtaining approval for these agreements.⁵⁹

2. Grace Commission Recommendations

In suggesting legislative remedies to cure these difficulties, the Commission noted that most of the problems did not arise from the need for the prospectus and congressional approval of certain expenditures. Rather, they resulted from the types of matters that required prospectus review and from the number of contracts that were being encompassed by this category simply because the threshold amounts had not been revised since 1972 or, in some cases, since 1959. Thus, many contracts were falling into the prospectus category solely because of inflationary forces, resulting in Congress reviewing a large number of contracts that it never was intended to see. For example, escalating real estate prices have placed before Congress leases of 10,000 square feet.

⁵⁵ GAO Report, *supra* note 41, at iii and p.25.

⁵⁶ RPM Report, *supra* note 12, at 97.

⁵⁷ *Id.* at 99. Section 13(a) of the Public Buildings Act. 40 U.S.C. § 612 (1959), Pub. L. 86-249, § 13, 73 Stat. 482; as amended, Pub. L. 90-448, Title VIII, § 807(f), 82 Stat. 544 (1968); and § 612(a), Pub. L. 94-541, Title I, § 105, 90 Stat. 2507 (1976).

⁵⁸ RPM Report, *supra* note 12, at 99.

⁵⁹ *Id.* at 90-91, 99-101.

This is less than a half floor in most commercial buildings in New York and San Francisco. Similarly, because construction costs have increased by 145% since 1972, a repair costing \$200,000 in 1972 dollars requires congressional approval in 1984.

The Commission made two major recommendations for legislation. First, change the \$500,000 to reflect inflationary increases which have occurred since passage of the original bills.⁶⁰ The new threshold would be approximately \$1,500,000. Second, incorporate a new type of threshold in the proposed legislation based upon either amount of floor-area leased or nature of repairs contemplated.⁶¹ The Committee recommended legislation to change the threshold for leases to 125,000 square feet, which is roughly equivalent to the average amount of space that would have been purchased when the original dollar thresholds were established.⁶² The Committee also proposed changing the threshold for repairs and alterations to \$1 million; a conservative amount that is significantly less than the \$500,000 threshold amount adjusted for current dollars.⁶³ Additional legislation was recommended to remove the present prospectus requirements on planned property repairs and improvements on aging buildings, which now also come under the purview of the Public Buildings Act.⁶⁴

The Commission made a number of other proposals to streamline governmental leasing policy. It suggested that the present policy of soliciting lease offers within Section 302(c) of the 1949 Act⁶⁵ be discontinued in favor of a more flexible, lease negotiating practice.⁶⁶ It also found the present requirement

⁶⁰ *Id.* at 102.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Except for several stated instances, Section 302(c) of the 1949 Act, *supra* note 17, requires that all purchase and property contracts must be bidded by first publicly advertising the bids with specifications. The advertising period must run up to 30 calendar days during which time bids are received. The SFO forms the basis of the lease bid and becomes a part of the final lease contract. Since the GSA's objective is to provide a uniform solicitation format, the proposed SFO becomes essentially the final lease document. The offer acceptance period varies from 15-60 days from the close of the bidding depending on the amount of estimated annual rental. *GSA Handbook* at Chapter 2.

⁶⁶ RPM Report, *supra* note 12, at 93.

that all government buildings meet national fire safety standards to be burdensome, often necessitating expensive alterations when compliance with local codes would suffice.⁶⁷

The Commission noted several other instances of anachronistic leasing laws. Section 322 of the Economy Act of June 30, 1932, as amended, limits rent and tax payments by a government tenant to no more than 15% of the assessed value of the occupied building.⁶⁸ In recent years, this restraint has prevented the government from locating at below-market and bargain rental rates in under-assessed buildings when these rent costs exceed the 15% level.⁶⁹ At the same time much higher rents are justified in more recently appraised or higher assessed buildings.⁷⁰

Executive Order No. 12072, promulgated by President Jimmy Carter, leads to similar paradoxical results.⁷¹ This Order requires that the government give central business areas preference for locating government offices, even when there is space available in nearby suburban areas.⁷² Accordingly, the RPM Report called for the revocation of these provisions of Executive Order No. 12072 and for the repeal of Section 322 of the Economy Act. If these recommendations are effectuated, government tenants could benefit from the cost efficiencies available from changing market conditions.⁷³

The Commission recommended that in some cases application of the Small Business Subcontracting Act to lessors renting space to the government should be suspended.⁷⁴ That Act requires that a lessor of space to a government tenant must make a conscientious effort to award renovation and construction contracts to small business firms.⁷⁵ In the past, this requirement increased renovation costs, and consequently, lease costs.⁷⁶

The Commission recommended application of the Act be

⁶⁷ *Id.*

⁶⁸ 40 U.S.C. § 278(A) (1932), c. 314, § 322, 47 Stat. 42.

⁶⁹ RPM Report, *supra* note 12, at 91.

⁷⁰ *Id.*

⁷¹ *Id.*, Exec. Order No. 12,072, 3 C.F.R. 213 (1979).

⁷² *Id.*

⁷³ *Id.* at 93.

⁷⁴ Amendments to the Small Business Investment Act of 1958, Pub. L. No. 95-507, 92 Stat. 1757 (1978).

⁷⁵ *Id.*

⁷⁶ RPM Report, *supra* note 12, at 91.

suspended when the resultant lease and renovation costs exceed the intended benefits. Implementing this recommendation will require legislation giving the GSA Administrator and regional officers considerable latitude in examining alterations and leases on a case-by-case basis to determine whether suspension of the Act is justified.⁷⁷

According to the RPM Report, adoption of all of the Commission's leasing and prospectus proposals should result in cost savings of about \$212 million.⁷⁸ Moreover, application of these measures should give the GSA greater flexibility in its lease negotiations and the ability to dislodge the congressional bottleneck created by the prospectus requirement, resulting in considerable savings of time and money in both instances.

C. *Space Utilization*

Closely tied with its lease and building requirements is the government's attainment of its space utilization goals. While aiming to reduce the costs of the space it uses, the government is also seeking to decrease the amount of space it needs to house its employees. Along these lines, the Committee submitted several general proposals to implement the GSA's planning and facility goals, to reaffirm that agency's authority in space allocations and to remove current ceilings on the standard lessee user charges.⁷⁹ These charges have in recent years been considerably below rental rates charged by the private sector. Congress in fact set a temporary ceiling on FY-1983 SLUC rates keeping them at FY-1982 levels.⁸⁰ This practice has reduced incentives to economize on space use because expansions can be achieved at a relatively inexpensive cost. By adopting a full-market price, SLUC, in the Committee's viewpoint would assist the government in meeting space reducing aims by reducing average square foot per employee by 20%.⁸¹ This increase in space use efficiency would cut

⁷⁷ *Id.* at 93.

⁷⁸ RPM Report, *supra* note 12, at 94, 103.

⁷⁹ *Id.* at 28-29.

⁸⁰ *Id.* at 25.

⁸¹ *Id.* at 27. The current average is 167 square feet per employee. The GSA's goal is 135 square feet per employee. At the current pace it will take 13 years to achieve this goal. The Commission's recommendation is to accelerate this goal by 8 years, thus achieving an additional \$234.4 million in net benefits. *Id.* at 27.

annual space charges by over \$350 million within a three year period.⁸² Funds generated by additional SLUC monies would be used to fund the government's public building fund, thus achieving long-term economies on two fronts.

D. *Unoccupied Government Property*

One of the more innovative proposals made by the Real Property Task Force was its plan to facilitate the government's program for disposing of its surplus properties.⁸³ A primary recommendation was proposed legislation to provide financial assistance to prospective buyers of surplus federal property when cash requirements could not be met and private sector financing was unavailable.⁸⁴ The Commission estimated that facilitating credit arrangement for prospective buyers and increasing the rate of sales could accelerate cash flow to the government by \$231 million through FY-1987.⁸⁵ Interest and maintenance savings on disposed property would amount to about \$54 million during the same period.⁸⁶

In FY-1983, the inventory of surplus federal real property was valued at over \$900 million.⁸⁷ Much of this represents abandoned or underutilized military property in the West. While some of this property can be readily adopted for commercial or private use, most of it will require large expenditures in order to alter its present design towards more profitable functions that would entice private sales.

The current policy for disposal of excess and surplus federal

⁸² *Id.* at 29.

⁸³ *Id.* at 31-43a. Classification of federal property is a two-step process. Property that cannot be used for its original purpose is declared "excess", that is, property under control of any federal agency not required for its needs and discharge of its responsibilities as determined by the agency head, and is first offered to other federal agencies. If this property cannot fill some other federal government need, it is declared to be "surplus" property (i.e., excess property not required for the needs and discharge of any federal purpose as determined by the GSA Administrator) and is offered to state and local governments for disposal. 40 U.S.C. § 472(e) and (g) (1972).

⁸⁴ RPM Report, *supra* note 12, at 37.

⁸⁵ *Id.* at 31.

⁸⁶ *Id.*

⁸⁷ *Id.* at 34-35.

properties is embodied in the dictates of an Executive order.⁸⁸ This order initiated a disposition program under the supervision of the GSA's Property Review Board (PRB).⁸⁹ It eliminated discounted sales within the government, a practice which had allowed federal agencies, states and local governments to acquire unneeded federal property at a fraction of its original cost or value.⁹⁰ Henceforth, any government unit seeking to acquire federally-owned property will have to pay fair market value for the land or improvements.

GSA set initial property disposal sales objectives of \$1.25 billion for FY-1983 and \$2.0 billion for each fiscal year from 1984 to 1987.⁹¹ Total expected sales would be \$9.25 billion for the five year period.⁹² After examining the program, the Grace Commission concluded that GSA could not attain its goals under its present format.⁹³

This shortcoming was largely attributable to three finance-related sources. These are the limitation of the universe of buyers due to the all-cash sale policy, the inability of many buyers to qualify for private financing due to the high cost of modification to convert federal properties to commercial use, and the limited availability of private sector financing due to high interest rates in prevailing credit markets.⁹⁴

The RPM Report urged the Property Review Board to re-evaluate its sales goals and to create incentives for agencies to remove surplus inventory from their property holdings.⁹⁵ More important, it suggested that the federal government underwrite the financing of surplus property sales.⁹⁶ The mechanism for underwriting is already in place in the guaranteed loan program of the Federal Financing Bank (FFB).⁹⁷

The FFB is a wholly-owned government corporation that has

⁸⁸ Exec. Order No. 12,348, 3 C.F.R. 134 (1983), revoking Exec. Order No. 11, 954, as amended, 42 Fed. Reg. 2297 (1977).

⁸⁹ RPM Report, *supra* note 12, at 33.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 35.

⁹⁴ *Id.*

⁹⁵ *Id.* at 36.

⁹⁶ *Id.* at 37.

⁹⁷ *Id.* at 40.

operated under the Treasury Department's jurisdiction since 1974.⁹⁸ Under its present format, federal agencies use the loan program to underwrite the obligations which they issue, sell or guarantee.⁹⁹ In turn, the agency guarantees the loan and insures the lender, the FFB, against any loss as a result of default by the borrower.¹⁰⁰ The FFB acquires its funds by borrowing from the Treasury at a rate that is twelve and one-half basis points above the Treasury's current rates.¹⁰¹ The FFB then relends to the agency at cost.¹⁰² Thus, if agencies were to finance government surplus property sales with FFB funds, the interest on these loans would be several hundred basis points below market mortgage rates. The Grace Commission found that the program could make financing available to private buyers, without providing any additional interest rate advantage. Consequently, the Commission¹⁰³ created a schedule factoring in a net present value calculation, which raised the price of any FFB property to include the advantages generated by below market interest rates.¹⁰⁴ The purpose of this schedule was to facilitate the sales program without having the government compete with private lending institutions for financing. The Commission proposed that the loan program expire at the end of FY-1987 to coincide with the term of the original PRB sales objectives.¹⁰⁵ This short life would be in keeping with the program's limited purpose of facilitating the government's property disposal plan.

Another major restraint that the Commission's proposal placed on the loan-program was to set a \$1 million floor on purchases qualifying for loan assistance.¹⁰⁶ This would limit the potential pool of available loans and reduce the administrative costs necessary to service a larger number of loans. The Commission placed the maximum loan to value ratio at 80%, and to limit the possibility of default specified that the borrower meet

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 40-41.

¹⁰⁵ *Id.* at 41.

¹⁰⁶ *Id.*

certain credit criteria.¹⁰⁷ Lastly, the Commission recommended that the normal life of an FFB-backed loan for this program be limited to seven years with a balloon payment of all principal and interest in the last year.¹⁰⁸ Thus, the loans would be selectively distributed, with a number of safeguards to minimize the risk of default and a short life to provide the earliest possible collection of proceeds after the sale.¹⁰⁹

Implementation of the loan program would require congressional approval. Such proposed legislation can be expected to be met with considerable congressional resistance because of the complexity of the proposal and the reluctance of Congress to authorize a loan program that may be even marginally competitive with private lending institutions. Quite possibly, only the concern about a drastically sluggish federal property sales program could provide the needed impetus for this plan.

E. *Services and Utilities*

The proposals in the services and utilities areas included the most hotly contested ideas within the issues covered by the Real Property Task Force. The official report called for sweeping revisions to the Service Contract Act (SCA).¹¹⁰ These recommendations were soundly attacked in a dissenting report prepared by one of the Task Force's co-chairman.¹¹¹

¹⁰⁷ *Id.* at 42.

¹⁰⁸ *Id.* at 42a.

¹⁰⁹ *Id.* at 40-42a.

¹¹⁰ Service Contract Act of 1965, Pub. L. 89-286, 79 Stat. 1034 (1965), as amended, 41 U.S.C. §§ 351-358 (Supp. 1984).

¹¹¹ Robert A. Georgione, President, Building of Construction Trades Department, AFL-CIO and co-chair of the Real Property Task Force, argued that implementation of the Commission's recommendations would bring back many of the practices that the Service Contract Act, *supra* note 110, was intended to prevent. In particular, Georgione saw a return of the practice whereby the Government would be able to force wages to the lowest level in the area where the contract is awarded instead of at the prevailing rate in that area. Georgione also faulted the Commission's proposals on the SCA for, among other deficiencies, their failure to consider the economic and social costs to employees if the proposals are enacted, their presumption of the unworkability of Section 4(c) of the SCA and the lack of recognition given to the congressional mandate that "due consideration" be given to in-house wage levels when setting the Service Contract Act prevailing wage. See RPM Report, *supra* note 12, at 50-51.

1. Minimum Wages for Government Service Contracts

The SCA was enacted in 1965 in order to place a floor on hourly wages in federal government "low bid wins" procurement and custodial contracts.¹¹² The purpose of the floor was to prevent wages on governmental service contracts from falling below comparable private sector wages.¹¹³ Under the SCA, the Department of Labor (DOL) was empowered to designate the minimal wages in any federal government service contract of \$2,500 or more.¹¹⁴ The 1972 amendments to the SCA enlarged this concept to require that the department give "due consideration" in the wage determination process to the pay scales of federal workers performing comparable services.¹¹⁵ These amendments also required that the DOL establish a "successor contractor" provision whereby the wage rates covered in a collective bargaining agreement in any existing service contract become the minimum wages for all succeeding contracts.¹¹⁶ This coverage was broadened by the 1976 amendments extending the SCA to almost all service areas, except for professional, administrative and executive employees.¹¹⁷

The RPM Report found that \$2.2 billion in custodial contracts fell within the SCA's purview.¹¹⁸ It also determined that the government paid more for contractual custodial services than did the private sector.¹¹⁹ A large part of this difference was attributed to the requirements of the SCA, particularly the broad scope of the "wage-determination" provisions which often resulted in the DOL determined rates being much higher than similar union contracts in the private sector.¹²⁰ Similarly, the "successor contract" provision of the SCA contributed to what the Commission called "artificially high" federal service contract wage rates.¹²¹ The Commission noted that rate-scale increases were typically renegotiated at the end of a service contract period

¹¹² RPM Report, *supra* note 12, at 43.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 44.

¹¹⁹ *Id.* at 45.

¹²⁰ *Id.*

¹²¹ *Id.*

and these increases had significant impact on later contracts under the "successor contractor" standards. This resulted in an ever increasing wage spiral in government service contracts.¹²²

In order to remedy this situation, the Commission suggested legislation to raise the \$2,500 SCA threshold to \$25,000. This level would reduce the number of contracts requiring administrative support.¹²³ The Commission reported that amending the SCA in this manner, would reduce the number of contracts requiring administrative support.¹²⁴ The Commission reported that amending the SCA in this manner, would result in a three year savings of \$926.2 million while still achieving the original goals of the SCA.¹²⁵

2. Energy Costs

Considerably less controversial than the recommendations for government service contracts were the Grace Commission's proposals to reduce energy costs in the buildings under GSA's control. Proposed was the installation of an energy management control system which has been successfully adopted in many private sector companies.¹²⁶ The system proposed by the Commission constitutes an electronic data processing system that provides automated energy management capability for a building or a complex of buildings.¹²⁷ These systems typically monitor, collect and process temperature and energy consumption data, displaying it in a central location and automatically turn heating and cooling units on or off according to predetermined conditions. Installation of such a system could result in realized savings of up to 10% of the previous year's costs with a payback of the system within three years.¹²⁸ Overall, net savings of \$385.1 million could be realized in three years after adopting such a system in all units controlled by the GSA and the military services.¹²⁹

¹²² *Id.* at 45-46.

¹²³ *Id.* at 47.

¹²⁴ *Id.* at 49.

¹²⁵ *Id.* at 64.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 63.

Although the power to develop an energy management system is within the authority of the GSA Administrator, approval of Congress and the OMB would be necessary for certain aspects of an energy change on all agency tenants. An Executive order may be necessary to clarify President Reagan's rescission in February, 1981¹³⁰ of his predecessor's emergency building temperature restrictions.¹³¹ The Commission felt that this rescission has been misinterpreted by some governmental officials as meaning that energy conservation was no longer a major priority of the government.¹³² Since 1981, energy consumption has increased about 4.1% per annum.

F. *Military Housing*

The Commissioner recommended that the Secretary of Defense impose a moratorium on construction of all new military housing units in United States urban areas.¹³³ This moratorium would reduce Department of Defense appropriations by approximately \$300 million over the next three years.¹³⁴ While a directive from the Secretary of Defense would suffice for the imposition of the moratorium, adoption of a companion policy to maintain military housing inventories at their current levels would, in the Commission's opinion, necessitate a congressional repeal of section 2824 of the Military Construction Codification Act.¹³⁵

Generally, the RPM Report found existing military base housing to be liveable and well-maintained, with the quality of family quarters closely resembling that of private sector housing

¹³⁰ Proclamation No. 4667, 3 C.F.R. 46 (1980), extended by Proclamation No. 4750, 3 C.F.R. 52 (1981), and 46 Fed. Reg. 3489 (1981). Section 3 of the Proclamation No. 4667 set the provisions of the Emergency Building Temperature Restrictions, Energy Conservation Contingency Plan, No. 2 (44 Fed. Reg. 12,911 (1979), into effect on July 16, 1979.

¹³¹ Proclamation No. 4820, 3 C.F.R. 9 (1982).

¹³² RPM Report, *supra* note 12, at 65.

¹³³ *Id.* at 105.

¹³⁴ *Id.*

¹³⁵ See Pub. L. 97-214, 96 Stat. 153 *et seq.*, esp. 96 Stat. 159 (June 17, 1982). This section allows the Secretary of Defense to acquire sole interest in existing family housing units that are privately owned or held by the Department of Housing and Urban Development, in lieu of constructing any family housing units authorized by law to be constructed. The Secretary may acquire less than sole interest in family housing units when these units are located in foreign countries.

standards.¹³⁶ In 1983, the United States Military had about 400,000 family dwelling units worldwide.¹³⁷ Service personnel living off-base receive a non-taxable basic allowance for quarters that has been supplemented since 1980 by a variable housing allowance.¹³⁸ The amount of this latter allowance differs by locality in the United States.¹³⁹ A major reason for providing this allowance has been to reduce the need for additional military construction, a need which has increased by an average of 1,400 new units yearly for the past eight years.¹⁴⁰ However, the Grace Commission found that the variable housing allowance has had little impact on stemming new construction.¹⁴¹ The greatest acceleration of new housing units has been in the past three years with the annual cost of these new units running about \$100 million.¹⁴²

The Commission reasoned that the immediate impact of a moratorium would be a step-up in private development to accommodate the military housing needs where existing inventories were inadequate.¹⁴³ However, the Commission's reliance on private sector developers to construct these units did not take into account any specific length of start-up time that private developers would need to supply these units. Thus, this issue must be resolved before these recommendations are adopted.

V. Summary

Adoption of all of the proposals contained in the Real Property Management Task Force report would result in short term savings and revenue generation of \$3.352 billion and cash acceleration of \$231 million over a three year period.¹⁴⁴ Most of the recommendations requiring congressional approval involve revising current laws, such as the threshold limits contained in the 1949 Act or the SCA; augmenting the powers of existing agencies like the FFB in its loan-guarantee program and the federal build-

¹³⁶ RPM Report, *supra* note 12, at 107.

¹³⁷ *Id.* at 105.

¹³⁸ *Id.* at 106.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 110.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 116.

¹⁴⁴ *Id.* at ii.

ing fund of the PBS or repealing outdated legislation. The fact that Congress has not responded in the past to attempts by the GSA or GAO to make these changes may be indicative of the reception that these proposals by the Grace Commission will receive on Capitol Hill.

It is more likely that the Commission's recommendations will be enacted by Executive order or by revising current administrative policy. Generally, the Real Property Task Force requested that the President issue Executive orders to establish or clarify federal real property management policy or particular aspects of that policy, such as energy conservation or in necessary cases to repeal prior Executive orders. It can be expected that the Grace Commission's proposals will be translated into governmental policy in this manner due to the expeditious manner in which an executive order can be issued and the impact that presidential leadership could have upon the government's adoption of the remainder of the Commission's recommendations.

President Reagan's re-election will significantly improve the chances of implementing the Commission's proposals. Since it will require at least two to four years to review and adopt any of the PPSSCC's major proposals, the responsibility for this program will continue to be in the hands of the same administration which conceived and organized it. It is unlikely that the full thrust of the Commission's work could be realized if a new administration took office during this implementation period. A new administration would not be as strong a proponent of the Commission's recommendations, notwithstanding the merits of or savings that could be realized by these proposals.

VI. Recommendations

- A. *Establishment of a Permanent, Non-partisan Commission to Review Periodically (every 5-7 years) Federal Government Spending and to Select Auditing and Management Procedures.*

Cost control in the federal government should not be limited to a massive, one-time examination conducted solely under the auspices of one President. Such examinations should be performed periodically to emphasize the importance to the government of innovative cost-cutting techniques developed in the

private sector. Due to the limited time the Grace Commission had to do its work, it was only able to touch the tip of the iceberg. Examination of many potential cost-savings areas were omitted or overlooked. A permanent committee would have the time advantage. Further, this committee would have the ability to follow-up its initial investigatory work with explanatory and interpretative material and congressional testimony.

B. *Necessity of Executive, Federal Agency, Congressional and Private Sector Representation on any Future Cost Control Commissions.*

The lack of congressional representation in the Grace Commission's formation or on its executive committees may have largely accounted for initial resistance to the proposals. By excluding congressional members, the Commission may have done itself a disservice since such a large number of its cost-saving proposals require congressional approval. Task force members were also denied valuable input from legislative sources, particularly the GAO, which had in the past prepared numerous studies for Congress on federal cost cutting and waste elimination. The GAO's assistance in verifying many of its cost-savings estimates was sorely missed due to the time limitation placed upon the Commission. Thus, with the GAO and Congressional Budget Office reviewing the task forces' estimates, the Commission's findings may be suspect if a large divergence is found between its numbers and the figures of these congressional groups.

Therefore, Congress and the federal agencies should be represented during these investigatory and proposal stages since the assistance of these groups will be needed in implementing any recommendations. Rather than have the President submit a voluminous report with numerous recommendations and data that will subsequently need to be verified, investigated and weighed by Congress, a commission with representation from both the executive and legislative branches can avoid much duplication of effort. This committee would be able to focus upon a number of key issues that all groups agree are necessary to be acted upon without having subsequent revisions or second guessing by a group excluded from the initial auditing process.

C. *Provide Federal Funding for Future Commissions to Allow for Greater In-depth Investigations and to Relieve the Burden of Funding a Government Project on the Private Sector.*

Regardless of the number of the Grace Commission's suggestions it adopts, the federal government will receive an extraordinary return on its investment since all the costs of the Committee were borne entirely by the participating corporations and private sector organizations. These sponsors absorbed the travel, lodging and salary expenses of the nearly two thousand full and part-time task force members who spent between four and twelve months in Washington. The federal government cannot expect these organizations to donate their personnel and incur these expenses regularly without sacrificing the quality of the organizations and personnel participating on such a panel. The government's cost of reimbursing these private sector expenses is miniscule in relation to the savings that will be realized from the recommendations generated by the Commission.

VII. *Conclusion*

Cost control and elimination of governmental waste are issues that are too important to delegate to one commission or one administration. This is particularly true as the projected annual federal deficits exceed \$200 billion and the aggregate federal debt approaches the \$1 trillion mark. Perhaps then, the most important proposal the Grace Commission can make is to suggest legislation creating a permanent, nonpartisan committee, as outlined above, to review periodically the government's expenses, efficiency, and fiscal management. Such a group can then take full advantage of the resources of both the private and public sectors in investigating federal spending and following up on its proposals to assure their adoption and implementation.

Undoubtedly, the Grace Commission proposals will generate a sufficiently large body of executive and legislative actions which will result in considerable short and long-term savings to the federal government and the adoption of more efficient managerial practices. With some foresight, the advantages of such a review may be extended to later generations by a commitment to continue these examinations in the future.