STATEMENT OF
THE AMERICAN LEGION

TO THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"ASSESSING VA'S CAPITAL INVESTMENT OPTIONS TO PROVIDE VETERANS' CARE"

JUNE 27, 2013

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Over the last 20 years, The Department of Veteran Affairs (VA) has utilized its medical leasing authority at 38 USC 8103 & 8104, in conjunction with the General Services Administration Acquisition Regulation (GSAR) and Federal Acquisition Regulation (FAR) to lease nearly 600 Community Based Outreach Centers (CBOCs). The wisdom, and need for these centers is not in question or dispute.

The average facility goes through a comprehensive competitive procurement process, whereby VA stipulates its unique needs in solicitations, offering contractors the chance to submit competitive proposals in an attempt to receive the lease award to provide underlying medical space so VA can serve Veterans in a convenient, accessible manner, with expertise that VA is required to provide. And, VA's major leases are negotiated based on fair market appraisals, where VA is not tied to lessor's underlying debt/loan obligations. Simply put – the VA enters into a leasing contract for these properties at competitive rates, similar to any other equal commercial property. The advantage to VA in the case of these leases is that they get to have a facility which is custom tailored to our veterans' needs, in space that VA can vacate at the end of the lease term, and the lessors can then repurpose the space for other desired non-VA uses.

Commercial property leasing is a common in the United States, and long-term leases are an industry standard. Some of the reasons that leasing property might make more sense that owning property include:

- Flexibility – As population demographics change, the lessee has the freedom to relocate to an area where they can best meet the needs of their client/customer/patients.
- Cost – Leasing a facility minimizes the financial burden placed on the organization, and the cost of occupancy can be stretched over the course of 10, 15, or even as much as 20 years.
- Risk – Construction cost overruns are more than common in the construction industry – in fact, they are almost a guarantee. Lease contracts help insulate the lessee from unexpected costs, due for example, to unforeseen issues, poor planning, loss-leader bidding, or underbidding. Underbidding is a common problem in the competitive construction process, as bidders seek to win large contracts by underbidding their competition, and then attempt to recover some of those lost revenues by adding on

charges later that weren't specifically named in the original bid, but are essential to the successful completion of the project. In the industry, these are referred to as modifications, or "mods" for short.

In 2005, The Congressional Budget Office (CBO) published an Economic and Budget Issue Brief titled "Third-party Financing of Federal Projects". It is this brief that CBO now uses as the basis for their opinion to score VA's future CBOCs upfront, by claiming that the total expenditure of a long-term lease be charged against the federal budget in the first year of the contract -- as if the federal government were to purchase the property and the supporting land outright. In addition, CBO states that a subsequent lease of 20 years (if VA remains in that same leased space) would not be scored fully upfront, but would instead be scored only for the years worth of financial commitment the government would need to draw from the treasury, year-by-year -- stretching the impact over the life of the lease, instead of in the first year as in the case of a new lease. According to CBO "We would treat renewal of the lease after the construction note is paid off as a straight lease. There would be no direct spending"[1].

According to the report, "if agencies do not initially record the full cost of governmental activities, the budget understates the size of the federal government and its obligations at the time when those obligations are made"[2]. From a pragmatic business perspective, The American Legion fails to see the difference between an initial lease, and a subsequent lease of equal time, and what logic dictates that the impact to the federal budget be considered differently in each scenario.

The 2005 CBO brief assumes that long term leases that are built-to-suit sufficiently satisfy the financed debt that the contractor invested in the project, and therefore the contract should be viewed a being more costly to taxpayers "In many instances of third-party financing, a project is created as a stand-alone entity, sustained by the cash flows generated by its assets"[3]. Based on our understanding of the brief, CBO disagrees with this business model, and leaves us, the reader, with the impression that the contractor, financier, and landlord are all somehow unjustly enriched, and that the government will ultimately pay more for these types of contracts than they would have, had they either purchased the property outright, or leased an existing property through a commercial leasing agent. Based on The American Legions evaluation of this program, we find no evidence to support this claim.

CBO further warns that the government could be liable for the total cost of a lease, even in the case of an early termination. In the 20 year history of the CBOC leasing program, The American Legion understands that there has only been one case where a major lease was prematurely terminated, and that the government did not suffer total-cost liability as a result of that early termination.

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[1] Email between CBO and TAL dated June 11, 2013 at 3:59PM
[2] Congressional Budget Office report, Economic and Budget Issue brief, Third-party Financing of Federal Projects June 1, 2005
[3] ibid

The American Legion recognizes that The Congressional Budget Office is in place to provide policy cost estimates through assumptions and methodologies, and that the opinion of the analyst is not politically motivated. We also recognize that the recommendations of CBO are provided to congress for inclusion in the overall evaluation process, and are specifically not intended as binding recommendations. As such, The American Legion calls on Congress to consider the government's cost to own, operate, and maintain facilities after their economic life has outlived its competitive usefulness. Healthcare treatment has advanced more in the past 20 years than any other time in our history, and it will advance at the same rate, or faster, over the next 20 years. The American Legion is concerned that VA will be saddled with an inventory of antiquated facilities, leaving veterans with substandard care, reduced access to quality care facilities, and outdated technology. The lease model provides VA with an exit strategy for inefficient facilities. If they own the properties, the exit strategy is less clear and possibly more expensive.

While The American Legion accepts that the analyst's opinion is not politically motivated, we question whether the opinion, in this case, is based on sound and reasonable business best practices. As an example, CBO states "Third-party transactions are generally structured in such a way as to try to justify recording investment costs in the federal budget over the life of a project instead of in full when the investment is made—as would be the case with normal appropriations. Treating investment costs as an annual operating expense may make it easier to get projects funded by eliminating the need for substantial up-front appropriations. However, such budgetary treatment is at odds with established principles of federal budgeting, which require agencies to record the costs of government investments when they are made." Accounting for obligations is different than accounting for investments. The leases discussed here are not burdens placed on the federal treasury in a single year, rather a series of investments committed to over the course of a long term contract. The American Legion disagrees with CBO's opinion that first term leases place a disproportionate obligation on the budget in the first year, as opposed to subsequent leases, and is able to find no statistical or empirical data to support this CBO claim.

At the time the CBO report was written, VA's CBOC lease program was still fairly new. CBO used only anecdotal data to support their assumptions, which in-turn supported their conclusions. After 20 years of facility leasing, The American Legion can find no accusations of overspending based on the CBOC facilities leasing program, nor has CBO offered any evidence that the CBOC leasing program has cost the American taxpayer a dime more than should have been spent.

The American Legion firmly believes that the opposite is true; that the CBOC leasing program is less expensive than purchasing, and as an added advantage, VA's budget is not overextended -- which allows them the freedom to open 10 to 20 times the amount of clinics to serve veterans than they would be able to, if they had made the decision to purchase the same facilities.

If Congress does not marginalize the opinion of the Congressional Budget Office in the case of CBO scoring these leases, then the cost of serving our disabled veterans in the affected communities will be exponentially increased – because each veteran will then be relegated to contract services – which the American Legion believes to be far less cost effective than leasing and operating VA's own facility. The American Legion also joins with the rest of the Veteran Service Organization community when we recognize that the best place for veterans to receive VA covered health care is at the VA.

Congress enjoys the services of several federally funded offices; the Congressional Budget Office is but one. Another well respected federal office that provides constructive nonpartisan evaluation and cost estimates based on legislative projections is the Congressional Research Service (CRS) and The Office of Management and Budget (OMB). Contrary to the CBO opinion, CRS and OMB both believe "Based on the information VA provided, OMB assumes these leases will be operating leases provided they are structured consistent with the requirements contained in OMB circular A-11."[4] In closing, VA is acting responsibly under its major lease authority, the GSAR and FAR, and in the best interest of veterans. With regard to this program, the American Legion finds that VA is acting in good faith, and is being responsible stewards of the taxpayer's money. Therefore, in accordance with The American Legion Resolution Number 24 dated May 8-9, 2013 which states:

WHEREAS, In the mid-1990s, Dr. Kenneth Kizer, former Department of Veterans Affairs (VA) Under Secretary for Health, revolutionized the delivery of health care to our nation's veterans by opening local community based outpatient clinics (CBOCs) to provide outpatient medical care to veterans; and

WHEREAS, CBOCs transformed VA into a health care-based system that became more geographically accessible to veterans; and

WHEREAS, Since the mid-1990s, the VA has turned to outpatient clinics as a way to bring health care closer to where veterans live, with 827 clinics to supplement the care provided at 152 medical centers; and

WHERAS, In FY 2012, H.R. 2646 authorized the VA sufficient appropriations to continue to fund and operate leased facility projects that support our veterans all across the country; and

WHEREAS, The Congressional Budget Office (CBO) abruptly changed its scoring methodology of interpreting leases as operational to capital leases after decades of precedence; and

WHEREAS, In September of 2012, the authorizations for 15 Veterans Health Administration facility leases were eliminated from a construction bill due to the scoring change initiated by the CBO; and

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[4] Email between Rep Boustany's office and TAL dated 15 may 2013 at 5:57PM containing an email response from The Congressional research Office, and an excerpt from a response from OMB.

WHEREAS, Approximately 27 leases are impacted for FY 2013 and FY 2014 (see Attachment A) as well as a number of future leases that are set to expire; and

WHEREAS, Based on the scoring change, funding for these leases must be accounted for up-front; and

WHEREAS, VA would see a detrimental impact on its budget and medical care program without the leases; and

WHEREAS, This technical book-keeping ruling prevents Congress from enacting important authorizations to renew and establish new leases; and

WHEREAS, If no action is taken to resolve the issue, veterans will ultimately suffer increased delays and diminished access to needed medical care and services; inefficiencies in their continuum of care, and veterans' care will negatively be impacted by increased costs of duplication of services and contracted care; now, therefore, be it

RESOLVED, By the National Executive Committee of The American Legion in regular meeting assembled in Indianapolis, Indiana, on May 8-9, 2013, That The American Legion request that Congress provide an annual or permanent exemption for the Department of Veterans Affairs (VA) leases from the Congressional Budget Office's scoring process, so as to give flexibility to VA to meet the health care needs of veterans.

Any questions concerning this testimony can be directed to The American Legion Legislative Director, Mr. Louis J. Celli Jr., The American Legion 1601 K Street NW Washington, D.C. 20006, by calling (202) 861-2700, or by email LCelli@Legion.org.