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New Rule Requires Disclosure of Foreign Ownership of Government-Leased Spaces

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On Thursday, July 1, 2021, the General Service Administration (the "GSA") issued an [interim rule](#) to amend the General Services Administration Acquisition Regulation. The amendment will implement two sections of the Secure Federal Leases from Espionage and Suspicious Entanglement Act (the "Act") in order to address foreign ownership of Government-leased real estate and require disclosure of certain foreign ownership information for the leasing of high-security space to U.S. Government agencies.

The first Section to be implemented under the interim rule is Section 3 of the Act. Under this Section, before a federal tenant seeking to rent a high-security leased space can enter into a lease agreement, the landlord must identify and disclose whether the immediate owner, or the highest-level owner of the leased space, including any entity involved in financing, is a foreign person or foreign entity, and disclose the country they are associated with. The landlord must also identify the name of the immediate owner and the highest-level owner. Regulatory guidance indicates that the immediate owner and highest-level owner are "direct control-based" and would not necessarily require disclosure of investors if not controlling the landlord. In relation to "financing," non-voting investors would have their de-identified interest and country of ownership disclosed. Relevant definitions are below:

- "High-security" leased spaces are those leased by federal lessees that will be occupied by federal employees for nonmilitary activities with a facility security level of 3 or higher (as determined by the Interagency Security Committee, DHS, and the GSA). Thus, it is the facility security level—and not that of the federal agency—that is applicable for purposes of the rule.
- "Covered Entity," for purposes of the rule, is defined as a person, corporation, company, business association, partnership, society, trust, or any other non-governmental entity, organization, or group, or any government entity or instrumentality of government.
- "Immediate Owner" is defined as the entity that has direct control of the offeror of a lease as defined by ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.
- "Highest-level Owner" is defined as the one that owns or controls an immediate owner of the offeror of a lease or that owns or controls one or more entities that control the immediate owner.

- “Financing” is defined in 552.270-33 as the process of raising or providing funds through debt or equity for purposes of meeting the requirements of the Lease, including, but not limited to, acquisition, maintenance, and construction of, or improvements to, the Property.

This disclosure must occur both before a lease is entered into and each year thereafter. If a disclosure is made, the federal lessee must notify the federal tenant of the building in writing and consult with the tenant to mitigate any security concerns prior to award of lease or novation. The rule went into effect on June 30, 2021 and applies to any new lease awards, exercise of options for current leases, lease extensions, and ownership changes entered into on or after June 30, 2021. The Act applies to leases administered by the GSA, the Architect of the Capitol, or the head of any federal agency other than the Department of Defense (the “DOD”) or the intelligence community. (The GSA is responsible for leasing space for many agencies of the federal government and has approximately 8,300 leases of space.) A separate statute (Sec. 2876 of the FY 2018 National Defense Authorization Act (NDAA) (Pub. L. 115-91)) already provides DOD similar authority to obtain ownership information with respect to its high-security leased spaces.

The GSA has not implemented new rules from Section 4 of the Act, but stated it would do so in the future. Section 4 would require GSA to enact a plan for identification of all immediate, high-level, and “beneficial owners” of high-security leased spaces. “Beneficial ownership” will be defined as “with respect to a covered entity, each natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises control over the covered entity; or (ii) has a substantial interest in or receives substantial economic benefits from the assets of the covered entity.” It would exclude ownership information on widely held pooled investment vehicles, mutual funds, trusts, or other pooled investment vehicles. Once Section 4 is implemented, it likely will require the disclosure of each natural person but not necessarily the corporate entity that may be a beneficial owner of a covered entity (the precise requirement will be set out in forthcoming regulations).

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