



December 2016

# FEDERAL JUDICIARY

Progress Made in  
Reducing Appellate  
Space, but Innovative  
Practices Should Be  
Shared across Courts

# GAO Highlights

Highlights of [GAO-17-134](#), a report to congressional committees

## Why GAO Did This Study

As of fiscal year 2015, the federal judiciary paid over \$1 billion in rent to the General Services Administration (GSA) for court-related space. GAO previously found that the judiciary faced challenges managing increasing space and rental costs, including for the U.S. Courts of Appeals.

GAO was asked to review the judiciary's space reduction efforts, focusing on appellate space. This report examines: (1) the policies and practices that guide space use decisions for federal courts of appeals; (2) trends in rent, space occupied, and use of appellate space; and (3) actions taken to reduce or improve use of appellate space, including any related challenges and the extent to which the judiciary has shared information to support such efforts.

GAO reviewed statutes, GSA and judicial policies and guidance, and information on projects to reduce appellate space; analyzed GSA's billing data on the judiciary from fiscal years 2009 through 2015; and visited 7 appellate courthouses, selected to include those in diverse locations with a variety of caseloads. GAO also interviewed officials in all 12 regional judicial circuits, AOUSC (the judiciary's administrative arm), GSA's central office, and GSA's 11 regional offices.

## What GAO Recommends

AOUSC should document and share additional practices across courts on innovative use or design of appellate courtrooms and judges' chambers. AOUSC said it will seriously consider GAO's recommendation.

View [GAO-17-134](#). For more information, contact Rebecca Shea at (202) 512-2834 or [SheaR@gao.gov](mailto:SheaR@gao.gov).

December 2016

## FEDERAL JUDICIARY

### Progress Made in Reducing Appellate Space, but Innovative Practices Should Be Shared across Courts

## What GAO Found

Various judicial policies, such as those in the *U.S. Courts Design Guide*, help guide appellate space use decisions. Other key policies include the judiciary's national 3 percent space-reduction target and the No Net New policy, which requires regional judicial circuits—including each circuit's court of appeals—to offset space increases with equivalent reductions. In practice, space use decisions are generally made by appellate courts in conjunction with their regional circuit judicial councils, which exercise authority over all courts in a circuit.

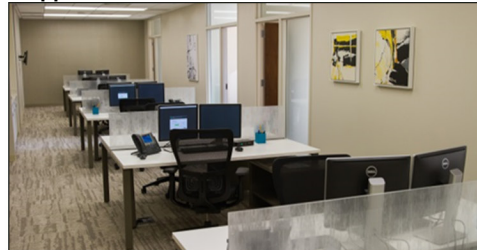
After trending upward through 2014, appellate rent costs and space occupied have recently begun to decrease. Specifically, appellate rent costs rose from about \$107 million in fiscal year 2009 to about \$123 million in fiscal year 2014, but have since decreased to about \$121 million in fiscal year 2015. During the same period, appellate space occupied grew from about 4.61-million square feet to about 4.89-million square feet in fiscal year 2013, but has since decreased to about 4.63-million square feet in fiscal year 2015. In total, courtrooms and judges' chambers account for about half of all appellate space, while libraries account for about 20 percent. Use of appellate courtrooms and judge's chambers varies across circuits, reflecting differences in circuit characteristics.

As of March 2016, circuits had completed 60 appellate space-reduction projects and begun an additional 22 projects, with the largest share of space reductions in circuit libraries. However, officials said that appellate space reductions will become increasingly challenging as easier projects are completed. To meet future requirements, most circuits said they anticipate needing to make reductions in, or changes to, appellate-courtrooms' or judges-chambers' use, such as the Third Circuit's appellate judges-chambers-sharing project (see fig.).

#### Shared Visiting Judges' Chambers, U.S. Court of Appeals for the Third Circuit



**Before:** A Third Circuit visiting appellate judge's chambers before the renovation. Chambers typically had three rooms, including a reception area, the judge's office, and another room for law clerks.



**After:** Newly built, shared staff office space for visiting appellate judges' law clerks, with doors to judges' offices visible. Each judge can travel with up to four staff, whose desks can be seen here. Reconfigured chambers are shared by four visiting judges and up to 16 total staff.

Sources: Photographs taken by GAO. GAO analysis of information and interviews with court officials. | [GAO-17-134](#)

While circuit officials have access to space reduction information provided by the Administrative Office of the U.S. Courts (AOUSC), limited information is available to circuits on innovative practices for design and use of appellate courtrooms and judges' chambers. As space reductions become increasingly difficult, documenting and sharing this type of information could help circuits identify and pursue innovative space-saving options for appellate courtrooms and judges' chambers in the future.

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## Abbreviations

AMP	Asset Management Planning
AOUSC	Administrative Office of the U.S. Courts
CRB	Circuit Rent Budget
GSA	General Services Administration
HQ	headquarters
IWI	Integrated Workplace Initiative

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December 14, 2016

The Honorable Jason Chaffetz  
Chairman  
The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

The Honorable John L. Mica  
Chairman  
The Honorable Tammy Duckworth  
Ranking Member  
Subcommittee on Transportation and Public Assets  
Committee on Oversight and Government Reform  
House of Representatives

As the federal government's principal landlord, the General Services Administration (GSA) acquires and manages courthouses and other space for the federal judiciary as well as real property for many federal agencies. The federal judiciary (judiciary) consists of a system of courts that has the responsibility of ensuring the proper administration of justice in the United States and handles all federal civil, criminal, and bankruptcy cases throughout the country. As of fiscal year 2015, the most recent year for which GSA published information on its property portfolio, the judiciary paid over \$1 billion in rent to GSA and occupied over 42-million square feet.<sup>1</sup> The judiciary is among GSA's top three agency tenants, both in terms of total annual rent and square feet.

In 2006, we found that the judiciary faced increasing rental costs and several challenges in managing these rising costs, including a lack of incentives for efficient space use and a lack of specific criteria for

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<sup>1</sup>This space is measured in rentable square feet—the metric GSA uses to bill tenant agencies—and includes both federally owned and leased space. GSA calculates rentable square feet by measuring building space, including courthouses, in terms of usable and common spaces (e.g., lobbies, restrooms, hallways). GSA Public Buildings Service, *FY 2015 State of the Portfolio Snapshot* (Washington, D.C.: 2015).

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determining the number of appeals courtrooms and chambers needed.<sup>2</sup> Since that time, and as we reported in June 2013, the judiciary has been affected by budget reductions, and has been identifying and implementing options for saving money and increasing efficiency.<sup>3</sup> In November 2015, we reported on some of the effects on the judiciary of spending reductions—known as sequestration—that occurred across the federal government in 2013, including one of the most significant effects cited by judiciary officials—loss of court staff.<sup>4</sup> We also found that the judiciary was implementing various cost containment initiatives in response to its budgetary challenges—including initiatives to restrain future costs of space and facilities—in order to meet the demand for judicial services in an environment of constrained resources. GSA publishes portfolio information on an annual basis, including square feet occupied and rent costs for the entire federal judiciary. However, neither GSA nor the judiciary publish information about how the judiciary's initiatives have affected space occupied by, rent costs of, or the use of space by federal courts of appeals, or other types of federal courts.<sup>5</sup>

You asked us to review issues related to appellate space. This report examines: (1) the policies and practices that guide space use decisions for federal courts of appeals; (2) trends in rent, space occupied, and use of courtrooms and other space for federal courts of appeals; and (3)

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<sup>2</sup>As part of this work, we made recommendations to, among other things, help improve the way the judiciary manages its space and associated rent costs. The judiciary has taken actions to implement these recommendations. GAO, *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, [GAO-06-613](#) (Washington, D.C.: June 20, 2006).

<sup>3</sup>GAO, *Federal Judiciary: Efforts to Consolidate and Share Services between District and Bankruptcy Clerks' Offices*, [GAO-13-531](#) (Washington, D.C.: June 13, 2013).

<sup>4</sup>Ultimately, the judiciary was required to reduce its nonexempt discretionary appropriations and mandatory spending by \$346 million, or by about 5 percent, over the remainder of fiscal year 2013. GAO, *Federal Judiciary: Improved Cost Estimates Could Help Better Assess Cost Containment Efforts*, [GAO-16-97](#) (Washington, D.C.: Nov. 10, 2015). In addition, current law requires government-wide limits in discretionary appropriations through fiscal year 2021 and sequestration of direct spending through fiscal year 2025. More specifically, the Budget Control Act of 2011 (BCA) establishes discretionary spending limits through fiscal year 2021. 2 U.S.C. § 901. The BCA, as amended, also imposes a sequestration process of discretionary appropriations through fiscal year 2021 and of direct spending through fiscal year 2025. 2 U.S.C. § 901a.

<sup>5</sup>The federal judiciary consists of the U.S. Supreme Court, 12 regional circuit courts of appeals, the U.S. Court of Appeals for the Federal Circuit, 94 district courts, 90 bankruptcy courts, as well as courts of special jurisdiction, such as the Court of International Trade and the Court of Federal Claims.

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actions the judiciary has taken to reduce or improve use of appellate space, including any related challenges and the extent to which it has shared information to support such efforts.

To address these objectives, we reviewed relevant statutes, GSA and judicial space policies and guidance, information on the judiciary's appellate space-reduction projects, and our prior reports related to the federal judiciary. We also analyzed nationwide judiciary rent data generated from GSA's billing system to determine the rent and space occupied by the U.S. Courts of Appeals from fiscal years 2009 through 2015.<sup>6</sup> According to our review of the data, relevant documentation, and discussions with GSA officials responsible for the data, we determined that the data were sufficiently reliable for the purposes of examining the rent and characteristics of the space occupied by the appellate courts from fiscal years 2009 through 2015. To understand how federal courts of appeals use their current space and make space decisions, as well as to identify actions taken to reduce or better use space, any challenges faced, and the extent to which the judiciary has shared information to support its efforts, we reviewed relevant documentation, interviewed officials from all 12 of the judiciary's regional circuits, including appellate judges, court staff, and space-planning officials, and visited a non-generalizable sample of seven appellate courthouses in the Third, Fourth, Seventh, and Ninth circuits and the District of Columbia. We chose site visit locations based on various factors—including characteristics of the circuits and appellate courts, such as number of case filings, location and number of appellate courthouses, and the scale of appellate space-

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<sup>6</sup>These data consist of monthly billing information, such as rent paid, rentable square feet, and assigned court unit from GSA's "Rent on the Web" system and additional information, such as usable square feet, from GSA's "Occupancy Agreement" system. According to GSA, rentable square feet is space that is available for a tenant to occupy plus common areas such as restrooms, lobbies, and hallways. Rentable square feet is used by GSA to measure tenant space occupied for billing purposes. Usable square feet includes space that is available for a tenant to occupy, but may not include common areas. Usable square feet is used by the judiciary to set national space reduction goals and measure progress towards those goals. In order to analyze trends over time, we used unique occupancy agreement numbers to examine monthly inventory snapshots from Rent on the Web—one for each month between October 2008 and September 2015—to provide information on the characteristics of space occupied by the U.S. Courts of Appeals during each fiscal year under review. Using unique occupancy agreement numbers, we matched these rent data with GSA's Occupancy Agreement data to provide information on usable square feet. We analyzed data from fiscal years 2009 through 2015 because 2009 was the first fiscal year for which GSA could provide billing information by court unit, and fiscal year 2015 was the most recent complete fiscal year in which GSA billing data by court unit were available.



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reduction projects—in order to include courts in diverse locations with a variety of caseloads, space reductions, and other characteristics. We also interviewed officials with GSA’s 11 regional offices that work with the judiciary on space needs and issues and officials from GSA’s central office and the Administrative Office of the U.S. Courts (AOUSC) about space use policies and appellate decision-making. We assessed the judiciary’s efforts to share information to support efforts to reduce its appellate space against federal standards for internal control—which include plans, methods, and procedures used to meet missions, goals, and objectives.<sup>7</sup> For more information on our scope and methodology, see appendix I.

We conducted our work from November 2015 to December 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

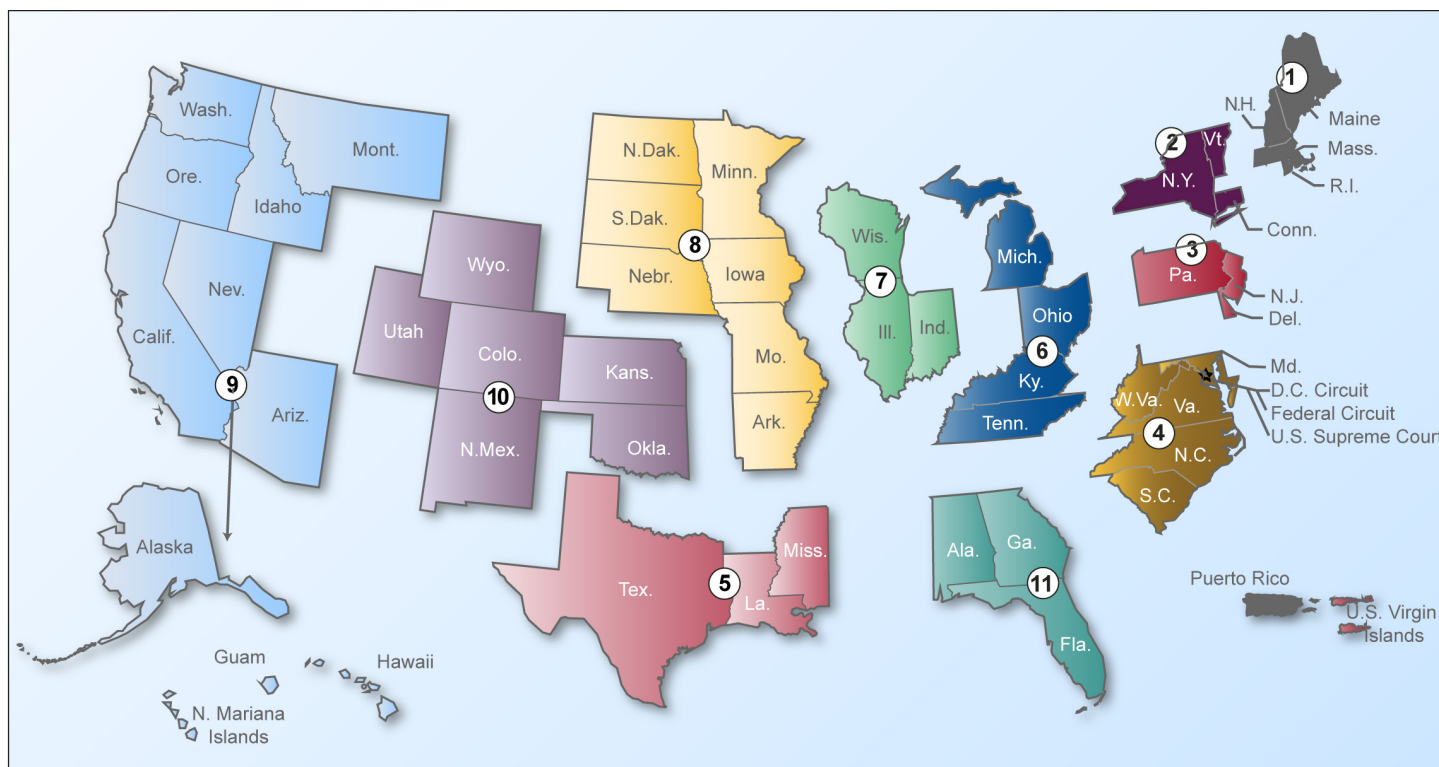
As noted earlier, the federal judiciary consists of the U.S. Supreme Court, 12 regional circuit courts of appeals, the U.S. Court of Appeals for the Federal Circuit, 94 district courts, 90 bankruptcy courts, as well as courts of special jurisdiction.<sup>8</sup> The 94 federal judicial districts are organized into 12 regional circuits, and each circuit has a court of appeals. Fig. 1 shows the areas that comprise the 12 regional circuits, which include the First through Eleventh circuits and the District of Columbia circuit. In addition, the Federal Circuit and U.S. Supreme Court are located in Washington, D.C.

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<sup>7</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014). Internal control is an integral component of an organization’s management that provides reasonable assurance that objectives related to the following are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. The judiciary is not required by law, as are executive branch agencies, to abide by *Standards for Internal Control in the Federal Government*, but these tenets are consistent with the management practices of leading organizations.

<sup>8</sup>Courts of special jurisdiction include the Court of International Trade and the Court of Federal Claims.

**Figure 1: Regional Circuits of the Federal Judiciary**



Sources: Administrative Office of the U.S. Courts and Map Resources. | GAO-17-134

The 12 regional circuit courts of appeals hear challenges to decisions made by district courts located within their respective circuits. Unlike trial courts, which determine the factual issues in a case and apply legal principles, in most situations, appellate courts determine only whether the lower courts correctly applied the law.<sup>9</sup> There are no juries or witnesses in appellate courts. Rather, parties generally file written briefs and may present oral arguments to a panel of three judges focusing on the questions of law in a case. The court of appeals decision is usually the final word on a case, unless it sends a case back to the trial court or the case is heard by the U.S. Supreme Court. In some cases, a decision may be reviewed “en banc,” that is, by a larger group of appellate judges—

<sup>9</sup>The U.S. district courts are the primary trial courts of the federal court system.

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typically all of the appellate judges in a particular circuit.<sup>10</sup> Appellate caseloads vary by regional circuit, and most appeals filed are decided based upon written briefs as opposed to oral arguments. Appendix II provides information on case filings per regional circuit for fiscal year 2015.

Appellate judges are appointed by the President and confirmed by the U.S. Senate to serve in a federal judicial circuit. There are 179 authorized federal appellate judgeships nationwide, with each circuit having a statutorily authorized number of such judgeships. Appellate judges have life tenure and may retire on salary if they meet certain requirements; however, according to AOUSC, many appellate judges who are eligible to retire decide to continue to hear cases on a full- or part-time basis as “senior judges.” Appendix II provides information on the number of authorized appellate judgeships per circuit, as well as the current number of actual judges. Each regional circuit court of appeals has a courthouse that serves as the headquarters where appellate judges and staff conduct the business of the court, including preparing for and hearing oral arguments.<sup>11</sup> Circuit headquarters house appellate courtrooms and judges’ chambers suites,<sup>12</sup> as well as circuit libraries,<sup>13</sup> court clerk’s offices, circuit executive’s offices, staff attorney’s offices, and other judiciary components.<sup>14</sup> Some appellate courthouses are shared with

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<sup>10</sup>In federal appellate courts, en banc hearings may be ordered by a majority of the active appellate judges when necessary to secure or maintain uniformity of the court’s decisions or when a case involves a question of exceptional importance. Practices may vary, however an en banc panel generally includes more than three judges and may include all of the active judges in the court and/or senior judges, depending on local rules.

<sup>11</sup>Under federal statute, courts of appeals are required to hold regular sessions at specific locations in the circuit, as well as at such other places as each court may designate, as codified at 28 U.S.C. § 48.

<sup>12</sup>The *U.S. Courts Design Guide* specifies that an appellate judge’s chambers suite provides space for one judge, three law clerks, two judicial assistants (or four law clerks and one judicial assistant), plus two visitors.

<sup>13</sup>The *U.S. Courts Design Guide* specifies that central court libraries are administered by the U.S. Court of Appeals and operate autonomously from circuit to circuit. The *Design Guide* allows each circuit to have a circuit headquarters library, and each circuit determines the number and location of satellite and unstaffed libraries elsewhere in the circuit.

<sup>14</sup>The court clerk is the chief administrative officer of the court, who keeps court records and supervises court operations, among other responsibilities. The Circuit Executive performs a broad range of administrative tasks under the direction of the regional circuit judiciary council, including providing advice and assistance to courts of the circuit concerning courthouse construction or information technology.

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other courts, such as the district or bankruptcy courts, while others exclusively house the U.S. Court of Appeals for a specific circuit.<sup>15</sup> Most circuit headquarters house some appellate judges whose resident location coincides with the circuit headquarters—in what is commonly known as resident chambers.<sup>16</sup> However, circuit headquarters also include visiting judges' chambers—commonly known as non-resident chambers—for other appellate judges who must travel from their resident location to hear oral arguments.<sup>17</sup> In addition to a circuit's headquarters, some circuits have courthouses and other space within the circuit where appellate judges may have chambers and where judges and circuit officials conduct the business of the courts, including preparing for appellate proceedings and hearing oral arguments.<sup>18</sup>

Governance of the judiciary is decentralized, and individual courts have discretion to organize operations, develop procedures, and make budgetary decisions within allotted funds to suit local needs. At the

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<sup>15</sup>More specifically, judiciary components housed in courthouses may include a U.S. court of appeals (appellate judges, senior appellate judges, chambers staff, and other offices mentioned above); U.S. district court (district judges, senior district judges, magistrate judges, chambers staff, and clerk's office staff); U.S. bankruptcy court (bankruptcy judges, chambers staff, and clerk's office staff); probation and pretrial services staff; federal public defender staff, and, in six circuits, bankruptcy administrator staff. In addition to these judicial components, certain executive branch agencies integrally involved with U.S. court activities often lease space in federal courthouses, including the Department of Justice's U.S. Marshals Service, U.S. Attorney's Office, and the Office of the U.S. Trustee.

<sup>16</sup>According to the judiciary's Asset Management Planning (AMP) Business Rules, each appellate judge, including each senior judge, is allocated one dedicated chambers at his or her resident location in either a courthouse or leased space. AMP Business Rules, Judicial Conference, Revised February 2012.

<sup>17</sup>According to the judiciary's AMP Business Rules, for circuit headquarters, where appellate judges sit to hear certain cases, the total number of chambers in the headquarters—both resident and visiting chambers—should equal the number of all of authorized appellate judges in that circuit plus the number of resident senior judges. In addition, circuit headquarters should also provide one visiting chambers for every two non-resident senior judges. AMP Business Rules, Judicial Conference, Revised February 2012. However, judicial officials also noted there are exceptions to these rules. For example, the D.C. Circuit only has one courthouse, the E. Barrett Prettyman U.S. Courthouse located in Washington, D.C., and all the appellate judges' chambers are located in that courthouse. Neither the D. C. Circuit nor the Federal Circuit has non-resident appellate judges' chambers.

<sup>18</sup>In addition, according to judicial officials, some of the 12 regional circuits may hold proceedings in borrowed non-judiciary space such as law schools. In addition, the Federal Circuit holds proceedings in the Howard T. Markey National Courts Building located in Washington, DC, as well as other locations nationwide in borrowed space (usually judiciary courtrooms).

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regional level, circuit judicial councils exercise administrative authority over all the federal courts within a circuit, and the circuit judicial council's meetings provide a forum for judges and court staff to discuss the administration of federal justice within a circuit. At the national level, the Judicial Conference of the United States (Judicial Conference), presided over by the Chief Justice of the United States, is the judiciary's principal policy making body.<sup>19</sup> The Judicial Conference is supported by the Administrative Office of the U.S. Courts (AOUSC), which is responsible for administering the federal judiciary's budget as well as performing other programmatic and administrative functions, such as paying the judiciary's rent bill to GSA from its annual appropriations from Congress.

GSA manages real property for many federal agencies, as well as for the judiciary, and has a large inventory of federally owned and leased properties. GSA manages its inventory via 11 regional offices and the central office, located in Washington, D.C. GSA works with AOUSC and judicial circuits in addressing courthouse space needs and issues. In this role, GSA, in consultation with the judiciary, enters into lease agreements on behalf of the judiciary, executes major repair and alteration projects at existing courthouses and federal buildings in the federal inventory, and when necessary is responsible for managing construction of new courthouses. When the judiciary determines it no longer needs space in a courthouse or office building, it may return space to GSA, assuming the space meets certain criteria, such as marketability of the space, and subject to approval by GSA. Assuming the space is eligible for return in federally owned properties, GSA will assume responsibility for the space and determine plans for the space.

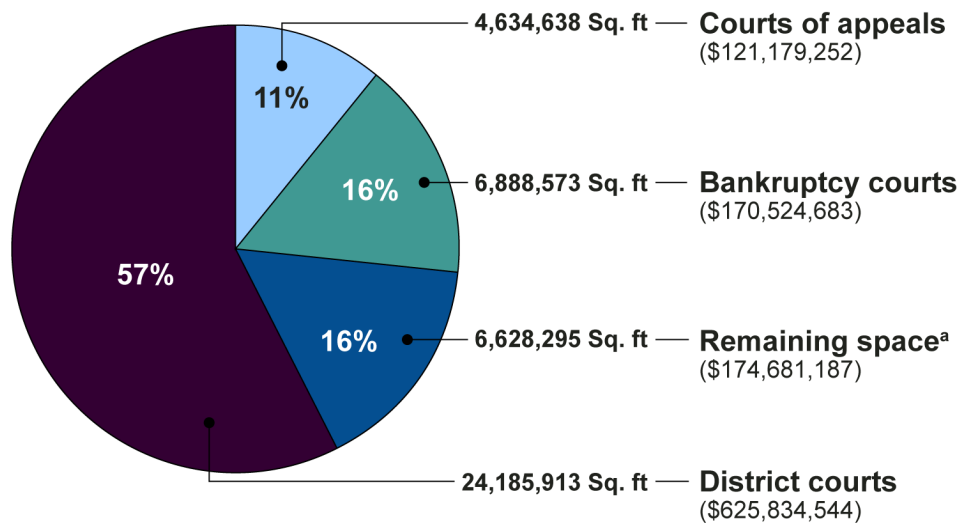
Federal entities that operate in facilities under the control and custody of GSA are required to pay rent for space they occupy. The federal judiciary is among GSA's largest federal tenants and leases more space in federally owned buildings than any executive or legislative branch agency. GSA also leases space for the judiciary in private office buildings, as needed. Figure 2 illustrates the distribution of space, based on rentable square feet and rent costs, for the federal judiciary in fiscal year 2015. GSA uses "rentable square feet" to measure space occupied by

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<sup>19</sup>Membership of the Judicial Conference comprises the chief judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit. The Judicial Conference operates through a network of committees created to address, advise, and make recommendations on a variety of subjects, including judicial space and facilities.

federal tenants for billing purposes, as well as for annual reporting. According to GSA, rentable square feet represent space that is available for a tenant to occupy, plus common areas such as restrooms, lobbies, and hallways. In recent years, the judiciary has undertaken a rent validation initiative to ensure the rent the judiciary is paying to GSA for space occupied is accurate. As part of this effort, the judiciary has worked with GSA to review building plans and space assignment drawings—and compare them with space occupied by the judiciary in federally owned buildings.<sup>20</sup>

**Figure 2: Space Distribution and Rent Costs of the Federal Judiciary, Fiscal Year 2015**



Source: GAO analysis of General Services Administration (GSA) data. | GAO-17-134

Note: Space distribution is measured in rentable square feet—the metric GSA uses to bill tenant agencies—and includes both federally owned and leased space. GSA calculates rentable square feet by measuring building space, including courthouses, in terms of usable and common spaces (e.g., lobbies, restrooms, hallways).

<sup>a</sup>The remaining space is composed of the Administrative Office of the U.S. Courts, the Federal Public Defender's Office, the U.S. Claims Court, the U.S. Supreme Court, Probation and Pretrial Services, and other federal court units.

<sup>20</sup>According to AOUSC, this effort resulted from a review of rent bills of individual court facilities, in which the judiciary identified the potential for courts to be overcharged for their space. As such, the judiciary and GSA embarked on a rent cost validation effort to review and validate the judiciary's rent bills.

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## While Appellate Space-Use Decisions Are Decentralized, They Are Guided by a Variety of Policies and Practices, Including National Policies to Reduce Space

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### A Variety of Policies Guide Appellate Space-Use Decisions

The appellate judges and officials we spoke with in the 12 regional judicial circuits and 11 GSA regional offices identified the following policies as essential in helping to guide appellate space-use decisions, as well as other court-related space decisions circuit-wide:

*U.S. Courts Design Guide (Design Guide):* The *Design Guide* specifies the judiciary's criteria for designing court facilities and sets the space and design standards that GSA uses for courthouse construction and renovation.<sup>21</sup> Judicial staff with whom we spoke said the *Design Guide* is considered the authoritative source for criteria on designing new courthouses and for major renovations of existing space, including for appellate courtrooms, judges' chambers, and circuit libraries. The *Design Guide* was recently revised to include a chapter on Alternative Workplace Strategies, which provides alternative designs that could result in more efficient use of office space compared with traditional office and cubicle layouts. This chapter of the *Design Guide* applies to court staff office space throughout the federal judiciary, such as Court of Appeals Clerk's and Circuit Executive's offices.<sup>22</sup>

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<sup>21</sup>First published in 1991, the *Design Guide* has been revised several times. Any significant deviation from the *Design Guide*'s standards must be approved by the relevant circuit judicial council, the Judicial Conference's Committee on Space and Facilities, the Judicial Conference, and then reported to Congress.

<sup>22</sup>According to AOUSC officials, use of alternative workplace strategies for court projects is one option circuits may use, depending on local court needs, to modernize their existing space and achieve efficiencies in space utilization.

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*National space reduction policies:* The Judicial Conference approved several space reduction initiatives to reduce future space and facilities costs in 2013. For example, the Judicial Conference set a national space reduction target in 2013, which aims to reduce the federal judiciary's total space by 3 percent by the end of fiscal year 2018, as measured in usable square feet.<sup>23</sup> According to GSA, usable square feet is defined as the space that is available for a tenant to occupy. The judiciary uses "usable square feet" to measure the space it occupies for its national space reduction policies, as well as for reporting its progress toward these goals. The national target has been prorated among the circuits based on the usable square feet occupied by each as of the beginning of fiscal year 2013, taking into consideration the amount of square footage allotted to the circuit under the current version of the *Design Guide*. In addition, the Judicial Conference adopted a "No Net New" policy in 2013, which is a national policy that requires circuits to offset any increases in square footage by an equivalent reduction in square footage identified within the same fiscal year.<sup>24</sup> According to officials with whom we spoke, while the national 3 percent space reduction policy will sunset in fiscal year 2018, the No Net New policy will be in effect for the foreseeable future. Table 1 provides examples of policies and processes that appellate judges and judicial officials said help guide their appellate space-use decisions.

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<sup>23</sup>The national 3 percent space-reduction target excludes: new courthouse construction, renovation, or alterations projects approved by Congress, and is contingent upon the judiciary's having access to funding to analyze, design, and implement space reductions (JCUS-SEP 13, p. 332).

<sup>24</sup>The No Net New policy is subject to the following exclusions: new courthouse construction, renovation, or alterations projects approved by Congress. The baseline for this policy is the square footage of total space holdings within each circuit as of the beginning of fiscal year 2013 (JCUS-SEP 13, p.32; JCUS-SEP 14, p. 29).



**Table 1: Examples of Policies and Processes That Guide Space-Use Decisions of the U.S. Courts of Appeals**

Policy or guidance	Description
<i>U.S. Courts Design Guide</i>	The <i>Design Guide</i> specifies the judiciary's criteria for designing court facilities and sets the space and design standards that GSA uses for courthouse construction and renovation.
National Space Reduction Policies	<p>The Judicial Conference approved several initiatives in 2013 to reduce space and facilities costs, including:</p> <ul style="list-style-type: none"> <li>National space reduction target—the judiciary must reduce total space by 3 percent by the end of fiscal year 2018.<sup>a</sup></li> <li>No Net New policy—any increase in square footage within a circuit needs to be offset by an equivalent reduction in square footage identified within the same fiscal year<sup>b</sup></li> </ul>
Asset Management Planning (AMP) Process and Business Rules	The judiciary's AMP Business Rules guide the judiciary's long-range facilities planning processes and contain guidelines for planning purposes, including rules for chambers and courtroom allocation. Judicial staff with whom we spoke pointed to the AMP Business Rules for the criteria they use for determining the number and location of appellate judge's chambers.
Circuit Rent Budget (CRB) Program and Rules	The CRB rules govern how circuits can use their rent funds and support the Circuit Rent Budget Program, which is a cost containment initiative aimed at improving the judiciary's ability to control space-related cost growth. Among other things, the CRB Business Rules provide an incentive for circuits and courts to relinquish space by allotting funding—equal to one year's rent savings and contingent upon availability—to a court unit that releases space to GSA (i.e., space accepted by GSA as marketable and that can be used for other purposes).
Circuit-specific policies	Some circuits have circuit-specific policies that guide appellate space-use decisions, such as limiting the size of satellite libraries (i.e., libraries outside of the circuit headquarters). In another example, a circuit instituted a fiscal austerity policy to limit circuit-wide spending on space and facilities.
Other policies	Relevant GSA and other policies may guide appellate space decisions, such as GSA's Facilities Standards for the Public Buildings Service (P-100), which establishes design standards and criteria for GSA buildings, and GSA's Pricing Desk Guide, which includes the policies used by GSA to price real estate and related services for federal tenant agencies.

Source: GAO analysis of information from and interviews with the federal judiciary and the General Services Administration (GSA). | GAO-17-134

<sup>a</sup>The national 3 percent space-reduction target excludes: new courthouse construction, renovation, or alterations projects approved by Congress, and is contingent upon the judiciary's having access to funding to analyze, design, and implement space reductions. The baseline for this policy is the square footage of total space holding within each circuit as of the beginning of fiscal year 2013 (JCUS-SEP 13, p. 332).

<sup>b</sup>The No Net New policy is subject to the following exclusions: new courthouse construction, renovation, or alterations projects approved by Congress. The baseline for this policy is the square footage of total space holdings within each circuit as of the beginning of fiscal year 2013 (JCUS-SEP 13, p.32; JCUS-SEP 14, p. 29).

In addition, the judiciary has also put in place initiatives to reduce future space growth and facilities costs, such as the Integrated Workplace Initiative (IWI) which provides options for court units to reconfigure and reduce space, including work space sharing and mobile working

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situations. The objective of IWI is to reduce the judiciary's footprint by taking advantage of the flexibility that technology allows, while creating a more efficient work environment. In addition, these projects are designed so that future increases in staff could be accommodated by increased mobility rather than space expansion. According to AOUSC, IWI is similar to efforts to implement shared workspaces in the private sector and across the executive branch.<sup>25</sup>

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### Appellate Space-Use Decision Making Is Decentralized, and National Space-Reduction Policies Have Incentivized Circuits to Reduce Space

Governance of the judiciary is decentralized and appellate space-use decisions are generally made by appellate courts in conjunction with each circuit's judicial council—which determines the need for all space accommodation within a circuit—in coordination with the Circuit Executive's office.<sup>26</sup> Within the circuit executive's office, most circuits have an Assistant Circuit Executive (ACE) for Space, who works with the circuit judicial council, judges, and courts personnel to help them realize their space requests. In many cases, decisions about space use originate from requests from individual court units or judges. As previously mentioned, individual courts have the discretion to make budgetary decisions within allotted funds to suit local needs. If a space request requires a major renovation of space, or if the circuit wishes to release space, circuits will work with the GSA to execute those actions. According to judiciary and GSA officials with whom we spoke, GSA may play an integral role in executing space projects, including space reduction projects resulting from the national 3 percent space reduction target and No Net New policies, once the courts have made a decision on which projects to pursue. However, according to these officials, GSA's role in actually determining circuits' space projects and needs is minimal.

Circuit and GSA regional office officials we spoke with noted that national space-reduction policies (i.e., the 3 percent space reduction target and the No Net New policies endorsed by the Judicial Conference in 2013), have had a significant impact on how circuits manage and view their space and have spurred action on the part of the circuits to reduce space and make better use of the space they have. To implement the 2013

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<sup>25</sup>According to AOUSC officials, use of alternative workplace strategies, or IWI concepts, for court projects is an option, but not mandatory.

<sup>26</sup>Under 28 U.S.C. § 332(d)(1), each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. The judicial council of each circuit is also authorized to appoint a circuit executive. See 28 U.S.C. § 332(e).

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national space reduction policies, the Judicial Conference required that each circuit judicial council formulate a space and rent management plan, specifying how the new space reduction policies will be implemented.<sup>27</sup> According to AOUSC, in the spring of 2014 each of the 12 regional circuits submitted its space and rent management plan, which articulates the circuit's strategy for how they will achieve their circuit reduction goal by the end of fiscal year 2018. Judiciary officials noted that as circuits look to find ways to reduce space in response to the new national policies, they look across all court units within their circuits, and have not focused exclusively on appellate space. With this in mind, appellate space reduction projects are just one part of a much larger effort circuit-wide.

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## Appellate Rent and Space Occupied Have Decreased in Recent Years, While Courtroom and Chambers Use Varies by Circuit

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### Appellate Rent Costs and Space Occupied Have Decreased in Recent Years

In recent years, after trending upward, appellate rent costs and space occupied have begun to decrease. Specifically, over the course of the 7-year period between October 2008 and September 2015 (fiscal years 2009 through 2015), appellate rent costs rose from about \$107 million in fiscal year 2009 to about \$123 million in fiscal year 2014, but have since decreased to about \$121 million in fiscal year 2015 (see fig. 3).<sup>28</sup> During the same period, appellate space occupied grew from about 4.61-million rentable square feet in fiscal year 2009 to about 4.89- million rentable square feet in fiscal year 2013, but has since decreased to 4.63-million rentable square feet in fiscal year 2015, with a similar trend for usable

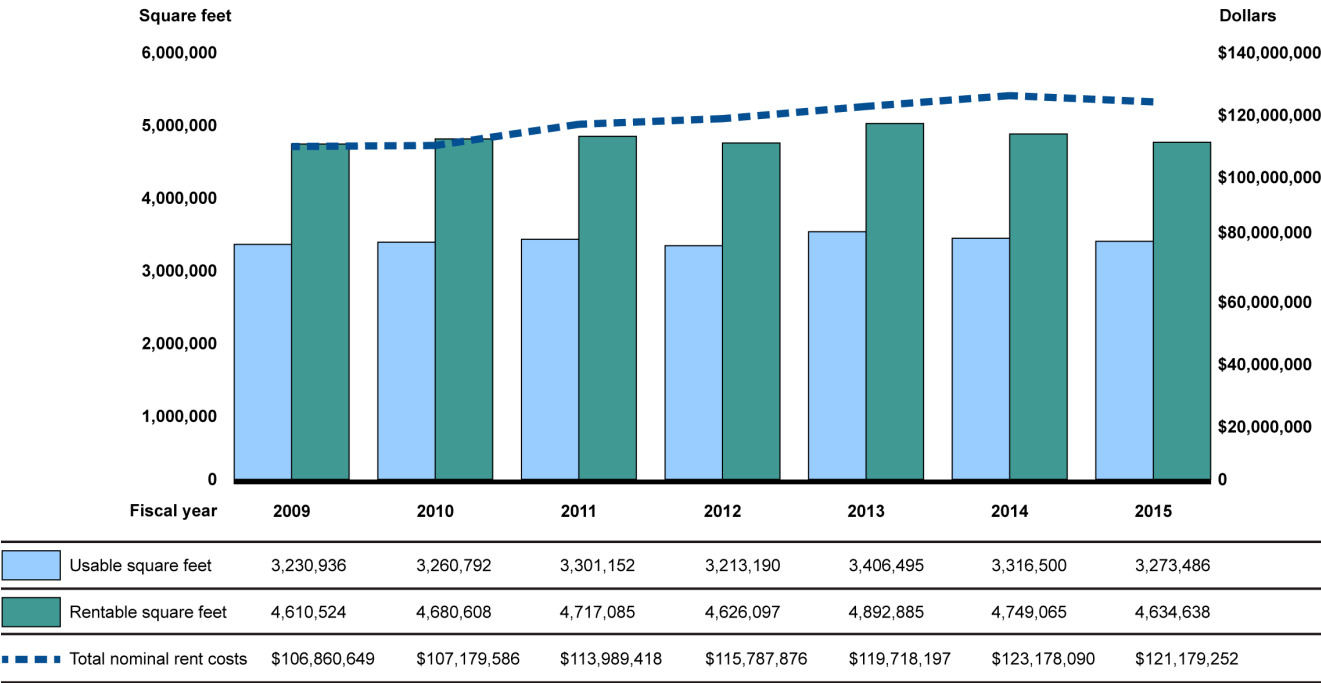
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<sup>27</sup>Pursuant to 28 U.S.C. § 332(e)(5), duties delegated to circuit executives may include, among other things, undertaking a space management program.

<sup>28</sup>We also conducted analyses of the judiciary's nominal rent costs adjusted for inflation, using the 2015 Gross Domestic Product price index, and found very similar trends in the judiciary's overall rent costs.

square feet.<sup>29</sup> As discussed above, according to officials from the judiciary we spoke to, the national space reduction target instituted in 2013, among other space reduction policies, have driven decreases in appellate rent and space occupied beginning in fiscal year 2013.

Figure 3: Rent and Square Footage of the U.S. Courts of Appeals, Fiscal Years 2009 through 2015



Source: GAO analysis of General Services Administration (GSA) data. | GAO-17-134

Note: These figures include square footage occupied and rent costs paid by the judiciary across seven appellate court space categories: Courtrooms and Judges’ Chambers; Circuit Libraries; Clerk; Central Legal Staff; Circuit Executive; General; and the Federal Circuit. GSA’s rent data combines courtrooms and judges’ chambers space occupied into the same category.

<sup>29</sup>More specifically, appellate space occupied, as measured in usable square feet, grew from 3.23-million square feet in 2009 to 3.41-million square feet in 2013, but has since decreased to 3.27-million square feet in 2015. In total, appellate space occupied decreased by about 133,000 usable square feet between fiscal years 2013 and 2015. In addition to reductions in space occupied by a tenant, a variety of factors may also contribute to changes in usable square feet, such as when occupied space is changed or reconfigured (e.g., a new or current tenant reconfigures space or a tenant moves into or out of a courthouse); changes occur to rent code category designations for occupied space; or if occupied space is re-measured by GSA. In addition, according to GSA officials, reductions in space occupied may not always correspond with reductions in annual rent costs for tenants due to increases that can occur in GSA’s rental rates resulting from market increases.

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In addition to recent decreases in appellate rent costs and space occupied, leased space occupied by the courts of appeals decreased by about 28 percent from fiscal years 2009 through 2015, while the federally owned space occupied by these courts increased by about 3 percent, as measured in rentable square feet.<sup>30</sup> According to GSA and circuit officials, the judiciary has worked with GSA to explore opportunities to save money by moving out of costly leased private space and into federally owned space, and these efforts have resulted in a decrease in privately leased space occupied by the appellate courts. For example, in January 2016, at the Lewis Powell U.S. Courthouse and Annex located in Richmond, VA, the Fourth Circuit's Office of Staff Counsel moved out of leased space into 44 renovated offices within the existing, historic appellate courthouse and annex.

#### Space Distribution within the Appellate Courts

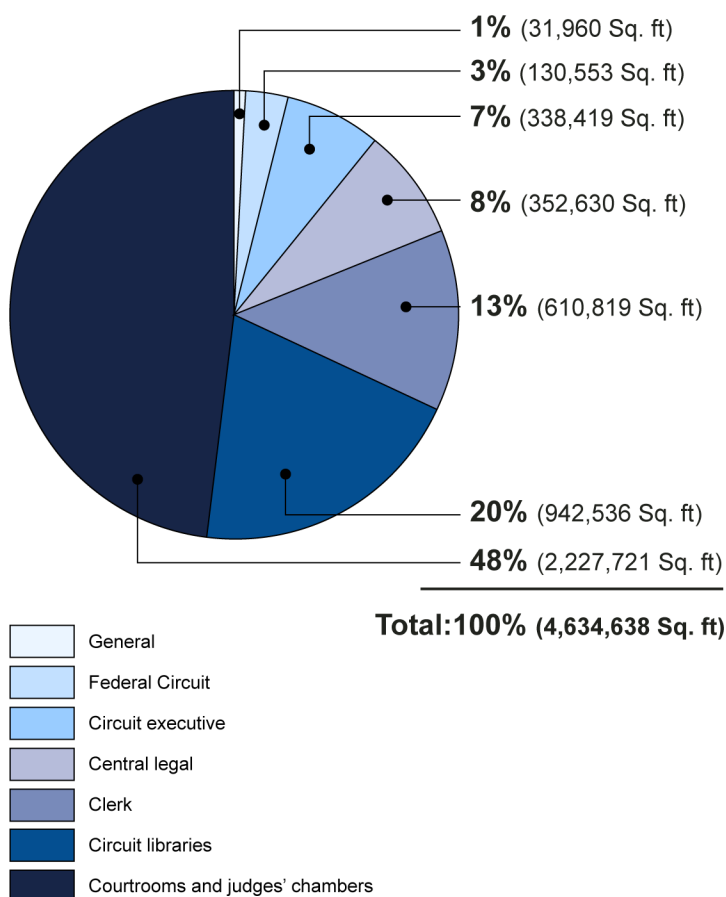
#### **Distribution of Appellate Space, Fiscal Year 2015**

Courtrooms, judges' chambers, and circuit libraries accounted for more than two-thirds of appellate space in fiscal year 2015, as measured in rentable square feet (see fig. 4).

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<sup>30</sup>More specifically, leased space occupied by the appellate courts decreased by about 111,343 rentable square feet (from approximately 404,224 rentable square feet in fiscal year 2009 to approximately 292,881 rentable square feet in fiscal year 2015), while federally owned space occupied by the appellate courts increased by about 135,456 rentable square feet (from approximately 4,206,301 rentable square feet in fiscal year 2009 to approximately 4,341,757 rentable square feet in fiscal year 2015).

**Figure 4: Rentable Square Footage of the U.S. Courts of Appeals, Fiscal Year 2015**



Source: GAO analysis of General Services Administration (GSA) data. | GAO-17-134

### Distribution of Appellate Space, Fiscal Years 2009 through 2015

Similar to the overall trends for appellate space from fiscal years 2009 through 2015 discussed earlier, square footage across the largest five of the seven appellate space types (i.e., courtrooms and judges' chambers, circuit libraries, clerk, central legal staff, circuit executive) trended upward until fiscal year 2013, as shown in table 2. However, since fiscal year 2013, the square footage for all types of appellate space occupied has decreased. The largest space type, courtrooms and judges' chambers, grew from about 2.10-million rentable square feet in fiscal year 2009 to about 2.29-million rentable square feet in fiscal year 2013, but has since decreased by 58,360 square feet to about 2.23-million rentable square feet in fiscal year 2015. The second largest space type, circuit libraries,

similarly trended upward until fiscal year 2013 (from about 950,000 rentable square feet in fiscal year 2009 to about 1-million rentable square feet in fiscal year 2013), and then experienced a decrease in space occupied between fiscal years 2013 and 2015 of 61,500 rentable square feet.

**Table 2: Rentable Square Footage of U.S. Courts of Appeals, Fiscal Years 2009 through 2015**

Space type	Fiscal year 2009	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015
<b>Courtrooms and judges' chambers</b>	2,103,448	2,172,918	2,152,490	2,126,386	2,286,081	2,260,547	2,227,721
<b>Circuit libraries</b>	950,278	993,741	974,892	974,490	1,004,036	992,786	942,536
<b>Clerk</b>	608,966	588,666	606,006	606,449	629,656	624,458	610,819
<b>Central legal</b>	328,243	330,373	375,320	373,494	390,694	354,799	352,630
<b>Circuit executive</b>	296,608	355,948	373,645	363,059	404,109	340,249	338,419
<b>Federal circuit</b>	118,532	118,387	133,220	133,357	133,357	132,169	130,553
<b>General<sup>a</sup></b>	204,450	120,577	101,512	48,860	44,951	44,057	31,960
<b>Total</b>	<b>4,610,524</b>	<b>4,680,608</b>	<b>4,717,085</b>	<b>4,626,097</b>	<b>4,892,885</b>	<b>4,749,065</b>	<b>4,634,638</b>

Source: GAO analysis of General Services Administration (GSA) data. | GAO-17-134

<sup>a</sup>According to officials with the Administrative Office of the U.S. Courts, the "General" category encompasses a variety of different appellate space types. Officials noted that the General category likely has decreased over time, in part, due to efforts on the part of the judiciary and GSA to re-categorize appellate space into one of the other, more specific space type categories.

## Appellate Space Occupied and Rent Costs by Regional Circuit

The amount of appellate space occupied within judicial circuits and the corresponding rent paid for this space varies widely, and the variation reflects differences among the circuits in geographic size and populations served, appellate case filings, number of facilities occupied, and rental rates.<sup>31</sup> More specifically, figure 5 shows the space appellate courts occupied in fiscal year 2015 by regional circuit, along with associated rent costs for that fiscal year. For example, the geographic size and appellate case filings of the Ninth Circuit are the largest of all appellate courts, and the corresponding annual rent costs are the highest of the circuits. However, while the Second Circuit's geographic area and appellate caseload are much smaller than those of the Ninth Circuit, the Second Circuit pays the second highest annual rent cost for its appellate space of all the circuits. These rent costs may be due, in part, to rental rates the

<sup>31</sup>According to AOUSC officials, rental rates charged by GSA vary by geographic location according to market rates in each locality.

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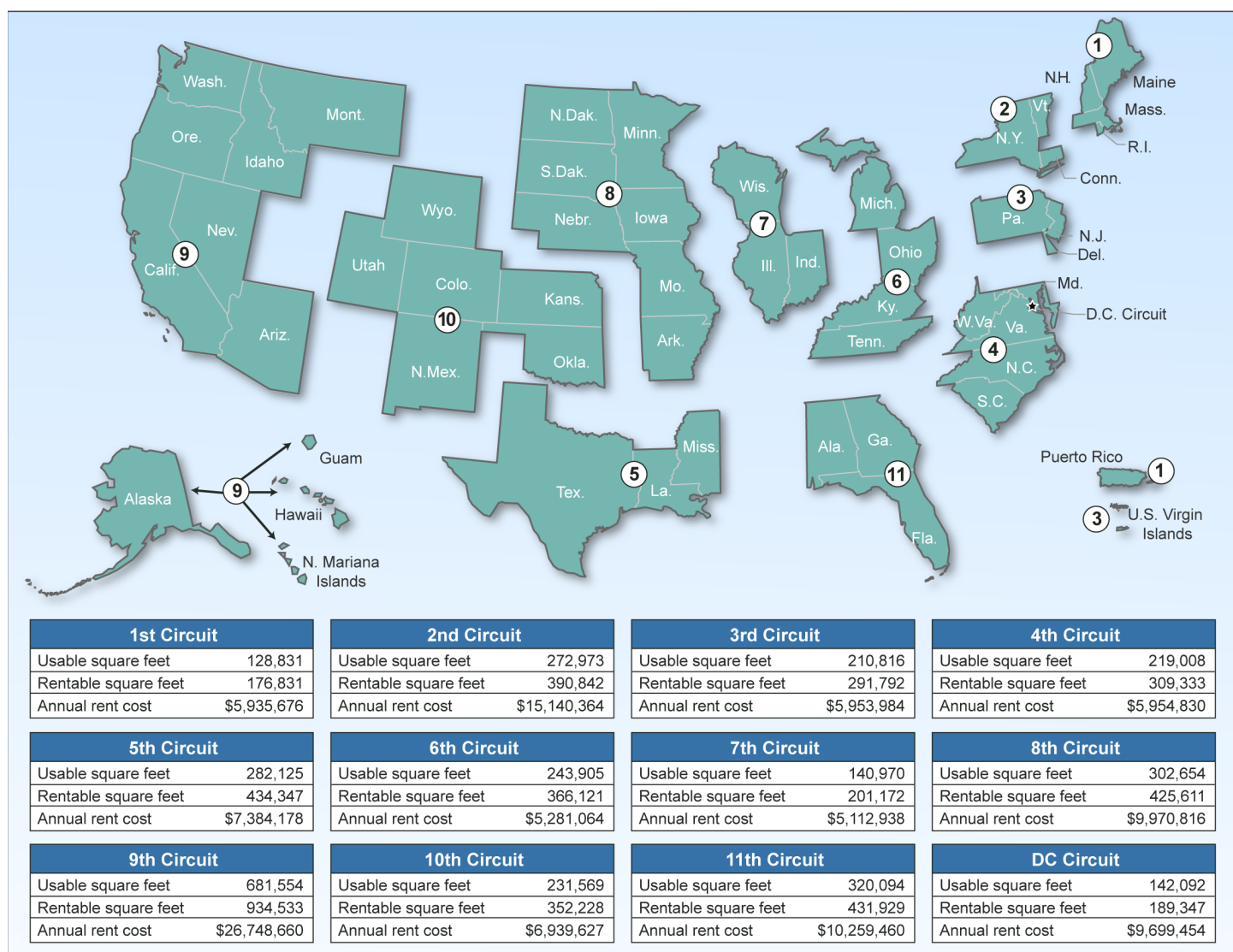
circuit pays for appellate space in its lower Manhattan circuit headquarters, the Thurgood Marshall U.S. Courthouse.<sup>32</sup>

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<sup>32</sup>According to GSA, GSA rental rates are linked to commercial rental rates. On the basis of a rent-pricing policy that was fully implemented in fiscal year 2000, the rent GSA charges is composed principally of shell (the building with basic infrastructure), operating expenses, tenant improvements, and security costs. In federal space, GSA updates the shell rental rates every 10 years on the basis of a building-specific rent appraisal. Certain buildings are priced using a return-on-investment (ROI) pricing model, providing a specific return on the cost basis of the building.



**Figure 5: Rent and Square Footage of the U.S. Courts of Appeals by Judicial Circuit, Fiscal Year 2015**



Sources: GAO analysis of General Services Administration (GSA) and Map Resources. | GAO-17-134

Note: This map includes square footage and rent costs for U.S. Courts of Appeals for the 12 regional judicial circuits. The U.S. Court of Appeals for the Federal Circuit is not included in the map.

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Use of Appellate  
Courtrooms and  
Chambers Varies across  
Circuits, Reflecting  
Differences in Circuit  
Characteristics, and  
Library Use Has  
Decreased

Courtrooms

While all circuits reported a decrease in the use of traditional library space due to digital technology, use of appellate courtrooms and chambers varies across circuits due to factors unique to each circuit—including geographic size, case filings, oral argument practices and tradition, and the space available for use in each courthouse.<sup>33</sup>

Circuits' use of appellate courtrooms depends upon a variety of factors, including the circuit's caseload and traditional oral-argument-scheduling practices (e.g., how often sittings occur and the number of cases heard per sitting),<sup>34</sup> as well as how many courtrooms are available to hear oral arguments.<sup>35</sup> Table 3 shows for each regional circuit the number of appellate courtrooms, oral argument sittings, and cases heard by oral argument in fiscal year 2015. According to officials we interviewed, since most appeals filed are decided based upon written briefs as opposed to oral arguments, appellate judges generally spend less time in courtrooms than they do in chambers, and according to AOUSC officials, in recent years appellate case filings have remained relatively stable. For those appeals requiring a courtroom, appellate court staff schedule oral arguments before panels of at least three judges in courtrooms on schedules that are at the discretion of the circuit, and which therefore vary by circuit. Based on our review of data and interviews, the circuits' scheduling of oral arguments affects how often appellate courtrooms are used. For example, the Second Circuit hears oral arguments every week except one for 11 months out of the year in one or both appellate courtrooms in its circuit headquarters in New York, NY. Other circuits may hear oral arguments less frequently, but typically run multiple oral argument sittings simultaneously in one courthouse, such as the Fourth Circuit, which holds multiple oral argument sittings simultaneously in up to

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<sup>33</sup>AOUSC officials noted that the size and number of libraries is also driven by unique local and circuit research needs and practices, as well as specific space and design considerations in each location.

<sup>34</sup>A sitting is any time three or more appellate judges sit together as a panel to hear oral argument. According to judicial officials with whom we spoke, appellate judges may hear anywhere from 1-6 appeals cases per sitting.

<sup>35</sup>As previously mentioned, under federal statute, courts of appeals are required to hold regular sessions at specific locations in the circuit, as well as at such other places as each court may designate, as codified at 28 U.S.C. § 48.

six courtrooms during six regularly scheduled “court weeks” in its circuit headquarters in Richmond, VA. Still other circuits may hear oral arguments in various courthouses located throughout the circuit at various times throughout the year. The Ninth Circuit operates this way and holds varying numbers of sittings in appellate courthouses in San Francisco, CA; Pasadena, CA; Seattle, WA; and Portland, OR, as well as in bankruptcy and district courtrooms in Hawaii and Alaska, respectively. Some circuit space-planning officials told us their circuits have considered seeking changes in the way oral arguments are scheduled for various reasons, including improving the utilization of appellate courtrooms, as discussed later in the report. However, AOUSC officials noted that some circuits have a small number of appellate courtrooms, therefore adjusting oral-argument-scheduling practices may not enable these circuits to reduce courtroom space. For more detailed information about how different circuits use their courtrooms for oral arguments, see appendix III.

**Table 3: U.S. Courts of Appeals’ Courtroom Locations, Number of Courtrooms, Oral Argument Sittings, and Cases Heard, Fiscal Year 2015**

U.S. Court of Appeals	Courthouse location(s) <sup>a</sup>	Number of courtrooms <sup>b</sup>	Number of oral argument sittings in fiscal year 2015 <sup>c</sup>	Total Number of cases heard by oral argument in fiscal year 2015 <sup>d</sup>
First Circuit	Boston, MA, headquarters (HQ)	2	41	289
	San Juan, PR	1	9	
Second Circuit	New York, NY (HQ)	2	229	786
Third Circuit	Philadelphia, PA (HQ)	2	94	221
Fourth Circuit	<i>Richmond, VA (HQ)</i>	6	93	293
	Baltimore, MD	2	1	
Fifth Circuit	<i>New Orleans, LA (HQ)</i>	3	157	801
	Houston, TX	1	16	
Sixth Circuit	Cincinnati, OH (HQ)	3	122	590
Seventh Circuit	Chicago, IL (HQ)	2	94	613
Eight Circuit	St. Louis, MO (HQ)	4	70	427
	St. Paul, MN	3	50	
	Kansas City, MO	1	10	
	Omaha, NE	1	10	
Ninth Circuit	<i>San Francisco, CA (HQ)</i>	5	165	1,507
	<i>Pasadena, CA</i>	3	160	
	<i>Portland, OR</i>	1	25	
	<i>Seattle, WA</i>	3	46	
Tenth Circuit	Denver, CO (HQ) <sup>e</sup>	4	68 <sup>f</sup>	347

U.S. Court of Appeals	Courthouse location(s) <sup>a</sup>	Number of courtrooms <sup>b</sup>	Number of oral argument sittings in fiscal year 2015 <sup>c</sup>	Total Number of cases heard by oral argument in fiscal year 2015 <sup>d</sup>
Eleventh Circuit	<i>Atlanta, GA (HQ)</i>	3	70	414
	Montgomery, AL	1	12	
	Jacksonville, FL	1	16	
	Miami, FL	1	46	
D.C. Circuit	Washington, D.C. (HQ)	1	105	288

Source: GAO analysis of judiciary data and information provided by court officials. | GAO-17-134

<sup>a</sup>Italicized courthouse locations indicate appellate courthouses that house no other court units.

<sup>b</sup>With the exception of the U.S. Court of Appeals for the Second Circuit in New York, NY, and the U.S. Court of Appeals for the District of Columbia, all appellate headquarters had one en banc courtroom that could accommodate all appellate judges in the circuit. Appellate courts with whom we spoke said that their judges sit en banc anywhere from 1-4 times per year.

<sup>c</sup>Sittings during the 12-month period ending Sept. 30, 2015. A sitting is any time three or more appellate judges sit together as a panel to hear oral argument. For example, if a courthouse has one courtroom and judges are sitting on a particular day to hear one or more cases, that would be considered one sitting. In another example, if a courthouse has two courtrooms in which different appellate judges are hearing oral arguments simultaneously in different courtrooms on the same day, that would be considered two sittings. According to judicial officials with whom we spoke, appellate judges may hear anywhere from 1-6 appeals cases per sitting.

<sup>d</sup>Cases heard during the 12-month period ending Sept. 30, 2015.

<sup>e</sup>There are also 2 courtrooms assigned to the U.S. Court of Appeals for the Tenth Circuit in Kansas City, KS. However, these courtrooms are rarely used by the appellate court, according to circuit officials, but instead are used as district court special proceedings courtrooms and rent for these courtrooms is paid by the district courts.

<sup>f</sup>The U.S. Court of Appeals for the Tenth Circuit held 9 additional sittings outside of their Denver, CO headquarters during fiscal year 2015.

## Judges' Chambers

According to judicial staff and judges with the U.S. Courts of Appeals, judges spend most of their work time outside appellate courtrooms in their chambers. However, typical use of resident and non-resident chambers depends upon a number of factors, such as the geographic size of a circuit and where its appellate judges are located, as well as how a circuit operates and what chambers space is available in appellate courthouses. As previously mentioned, according to the judiciary's AMP Business Rules, each appellate judge is allocated one dedicated chambers at his or her resident location in either a courthouse or leased space.<sup>36</sup> In addition, depending upon where a judge's duty station is located and where that location fits into the geography of the circuit, an appellate judge's resident chambers might not be located within the appellate courthouse in which oral arguments are heard. In these cases, appellate judges may also

<sup>36</sup>Senior judges are also allocated one dedicated chambers at their resident location. Asset Management Planning (AMP) Business Rules, Judicial Conference, Revised February 2012.

have non-resident (i.e., visiting) chambers available for use at one or more courthouses within their circuit. Whether these non-resident appellate chambers are assigned to specific visiting judges or shared among visiting judges is up to the discretion of the circuit. For example, a circuit's space-planning official said appellate judges in his circuit do not share visiting chambers; while in another appellate courthouse in San Francisco, CA, visiting judges use a row of nine small visiting chambers shared by 11 non-resident judges, who request them as needed. Table 4 shows the resident and non-resident chambers in the courthouses that house appellate courtrooms.

**Table 4: U.S. Courts of Appeals' Judges, Courthouse Locations, and Associated Judges' Chambers, as of October 2016**

U.S. Court of Appeals	Authorized number of judges	Actual number of judges <sup>a</sup> plus senior judges	Courthouse location(s) <sup>b</sup>	Resident judges' chambers <sup>c</sup>	Non-resident judges' chambers
First Circuit	6	6 plus 4 senior judges	Boston, MA (HQ)	5	6
			San Juan, PR	1	0
Second Circuit	13	13 plus 9 senior judges	New York, NY (HQ)	14	8
Third Circuit	14	13 plus 11 senior judges	Philadelphia, PA (HQ)	8	6
Fourth Circuit	15	15 plus 2 senior judges	Richmond, VA (HQ)	1	16
			Baltimore, MD	3	0
Fifth Circuit	17	15 plus 6 senior judges	New Orleans, LA (HQ)	4	15
			Houston, TX	6	0
Sixth Circuit	16	15 plus 8 senior judges	Cincinnati, OH (HQ)	0	24
Seventh Circuit	11	9 plus 3 senior judges	Chicago, IL (HQ)	8	7
Eighth Circuit	11	10 plus 6 senior judges	St. Louis, MO (HQ)	1	19
			St. Paul, MN	0	15
			Kansas City, MO	2	4
			Omaha, NE	1	3

U.S. Court of Appeals	Authorized number of judges	Actual number of judges <sup>a</sup> plus senior judges	Courthouse location(s) <sup>b</sup>	Resident judges' chambers <sup>c</sup>	Non-resident judges' chambers
Ninth Circuit	29	28 plus 16 senior judges	<i>San Francisco, CA (HQ)</i>	7	33
			<i>Pasadena, CA</i>	13	20
			<i>Portland, OR</i>	3	4
			<i>Seattle, WA</i>	7	7
Tenth Circuit	12	12 plus 7 senior judges	Denver, CO (HQ)	4	14
Eleventh Circuit	12	11 plus 8 senior judges	<i>Atlanta, GA (HQ)</i>	6	12
			Montgomery, AL	3	3
			Jacksonville, FL	4	3
			Miami, FL	4	3
D.C. Circuit	11	11 plus 6 senior judges	Washington, D.C. (HQ)	17	0

Source: GAO analysis of information from and interviews with court officials. | GAO-17-134

<sup>a</sup>Actual number of judges is the authorized number of appellate judges less vacancies.

<sup>b</sup>These represent appellate courthouses that house appellate courtrooms in which oral arguments can be heard. Italicized courthouse locations indicate appellate courthouses that house no other court units.

<sup>c</sup>In many cases, appellate judges' duty stations are not located within an appellate courthouse. Therefore, in addition to the chambers provided in the table, there are additional resident chambers located throughout regional circuits in other courthouses, federal buildings, or leased space, that are not represented in this table.

## Circuit Libraries

As previously mentioned, all circuits have central libraries in headquarters courthouses and satellite libraries elsewhere in the circuit for court staff, judges, attorneys, and, in some cases, the public to use. Appellate staff we spoke with at all circuits said that circuits are monitoring how their library collections are used in order to determine the materials they need to retain, as library users increasingly access materials electronically and therefore no longer need access to as much paper material. As previously mentioned, according to our analysis of GSA's rent data, circuit library space experienced a decrease in space occupied between fiscal years 2013 and 2015 of 61,500 rentable square feet. Appellate staff we spoke with at all circuits around the nation said they have been working to decrease their circuit library space, as discussed later in the report.

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## Circuits Have Reduced and Improved Appellate Space Use despite Challenges; However, Additional Information Could Help Guide Space Decision Making

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### Circuits Have Taken Actions to Reduce Libraries and Other Appellate Space

All 12 regional circuits have taken actions to reduce and improve the use of appellate space throughout the nation since the judiciary established the national space reduction target in 2013—with the largest share of space reduction projects occurring in circuit libraries. As of March 2016, according to the most recent AOUSC data available and our interviews with all 12 regional circuits, circuits have completed 60 appellate space-reduction projects and begun an additional 22 projects—for a total of 82 projects.<sup>37</sup> In total, these account for approximately 252,643 usable square feet that have already been, or will be, taken off the judiciary's rent bill, according to AOUSC.<sup>38</sup> More specifically, the 60 completed appellate space-reduction projects account for 169,231 usable square feet that have been taken off the judiciary's rent bill since fiscal year 2013 and appellate space-reduction projects planned or under way account for an

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<sup>37</sup>We reviewed appellate space reduction project lists provided by AOUSC as of March 2016 and interviewed all 12 regional circuits about their appellate space reduction projects; however, we did not independently verify information or square footage reported for all 82 appellate projects identified. As previously mentioned, GSA's data indicates that appellate space occupied decreased by about 133,000 usable square feet between fiscal years 2013 and 2015 (i.e., the three-year period between October 2012 and September 2015), as measured in usable square feet. This reduction is consistent with information the judiciary provided which estimates usable square feet reduced through September 2015, but may not be directly comparable to the appellate space reduction estimates provided by the judiciary through March 2016.

<sup>38</sup>These figures represent space reduction actions only and do not represent the actual net change in appellate space, because they do not take into account any increases in appellate space that may have occurred during this time period. While AOUSC tracks both space increases and decreases judiciary-wide as it monitors its progress toward meeting the 3 percent target, it does not track space increases separately for appellate projects.

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additional 83,412 usable square feet that will be taken off of the judiciary's rent bill by fiscal year 2018, according to AOUSC's March 2016 data. Library reductions accounted for approximately 55 percent of the 82 appellate space reduction projects completed or under way since 2013, as measured in usable square feet. According to AOUSC, in recent years, the Judicial Conference has approved several cost-saving initiatives relating to libraries and legal research resources that have resulted in reductions in library space throughout the regional circuits.<sup>39</sup> The remaining projects consist of reductions of courtrooms and judges' chambers (about 25 percent) and appellate staff offices and storage (about 20 percent).<sup>40</sup>

Appellate space reduction projects range in size from the release of 37 usable square feet of storage space in the E. Barrett Prettyman U.S. Courthouse in the D.C. Circuit, to a series of three reductions totaling 18,213 usable square feet at the Fifth Circuit's Homer Thornberry Building located in Austin, TX. The reductions included the closure of a satellite library and—due to fluctuations in the number of appellate judges—the release of appellate judges' chambers. Table 5 provides other examples of appellate space reduction projects completed and planned as of March 2016.

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<sup>39</sup>For example, in September 2013, in an effort to reduce space and costs, the judiciary undertook an evaluation of its library program to assess the continuing need for each library. According to AOUSC, the Judicial Conference approved a recommendation that all regional circuit judicial councils renew an effort to determine the continuing need for each library. In response, circuits assessed their library space and collections. This process resulted in closures of five locations and reductions in 25 others, according to AOUSC.

<sup>40</sup>According to circuit officials, appellate space reduction projects are helping the judiciary to meet its overall 3 percent space-reduction target, but reductions in space are concurrently occurring throughout circuits in other courts as well. Accordingly, as of March 2016, AOUSC has reported that the entire judiciary removed about 570,064 usable square feet from its GSA rent bill, for a reported cost avoidance of \$15.5 million, representing 66 percent of the judiciary's overall 3 percent space-reduction target. According to AOUSC officials, this reduction in the rent bill reflects actual space released back to GSA; however, it is not a net reduction to the rent bill because there have been some space increases to the judiciary's inventory from new construction and alteration projects completed and occupied during the course of each year.



**Table 5: Examples of Completed U.S. Courts of Appeals' Space Reduction Projects, as of March 2016**

Category	U.S. Court of Appeals	Description
Circuit libraries	Sixth Circuit	Consolidation and relocation—In Cincinnati, Ohio, at the Potter Stewart U.S. Courthouse, the Sixth Circuit reduced and relocated the circuit library to court of appeals clerk space on a different floor, removing 14,709 usable square feet from the circuit's GSA rent bill.
	Ninth Circuit	Release of space with renovation—In Anchorage, Alaska, at the Anchorage Federal Building, the Ninth Circuit released 1,275 usable square feet of library space to GSA. Since GSA considers the marketability and suitability of released space when attempting to attract potential tenants, circuit officials said the judiciary would fund the cost to make the space marketable to other GSA tenants by adding required access to the space.
	Eleventh Circuit	Space reassignment—In Miami, Florida, at the Wilkie D. Ferguson, Jr. U.S. Courthouse, the Eleventh Circuit released 5,837 usable square feet of circuit library space to the district court for its expansion needs.
Judges' chambers	Second Circuit	Space reassignment—In Manhattan, New York, at the Thurgood Marshall U.S. Courthouse, the Second Circuit released a 1,664 usable square foot non-resident judge's chambers to GSA. GSA will reassign the space to the U.S. Marshals Service, which requested the space to expand its offices.
	Third Circuit	Change in status of judge—In Goleta, CA, the Third Circuit released 3,615 usable square feet of judges' chambers following the death of a judge.
Office space	Fourth Circuit	Consolidation into federally-owned space—In January 2016, at the Powell Courthouse Annex in Richmond, VA, the Fourth Circuit moved the Court of Appeals Office of Staff Counsel from leased space into 44 renovated offices within the existing, historic courthouse and annex.
	Fifth Circuit	Large consolidation—In New Orleans, Louisiana, at the F. Edward Hebert Federal Building, the Fifth Circuit released 9,977 usable square feet of staff attorney space in combination with 4,179 usable square feet of appellate clerk's office space as part of a large, combined project. Circuit officials expect to release an additional 3,333 usable square feet of space in a later phase of this project.

Source: GAO analysis of information and interviews with the judiciary and the General Services Administration (GSA). | GAO-17-134

## Some Circuits Have Taken Innovative Approaches to Reducing or Improving Courtrooms' and Chambers' Use; Others Expect To Do So

Some circuits had already begun to reduce or better use their existing appellate space through innovative courtroom and judges' chambers design prior to the 2013 national space-reduction policies; other circuits said they anticipate making reductions in, or changes to, how they use appellate courtrooms or judges' chambers space as they look to further reduce space.

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## Innovative Approaches to Appellate Chambers and Courtrooms' Design and Use

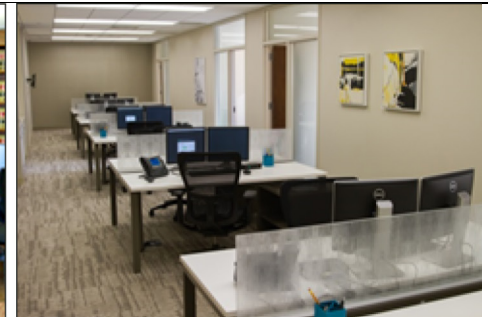
The following two projects are examples of innovative approaches to using appellate courtroom and judges' chambers space, including designs that employed unique space reduction tactics.

*Shared non-resident appellate judges' chambers:* At the James A. Byrne U.S. Courthouse located in Philadelphia, PA, the Third Circuit's space-planning officials have reconfigured three existing non-resident appellate judges' chambers so that more appellate judges and their staff can use this space when they are visiting the headquarters to hear oral arguments. In order to implement this configuration, the appellate judges within the circuit agreed that they would be willing to use less chambers space when visiting the headquarters than provided for in the *Design Guide*. Each re-configured non-resident chambers suite will be able to accommodate four visiting judges (as opposed to 1) and their staff (up to 4 staff for each judge) in the same footprint of what was previously one non-resident appellate chambers suite (see fig. 6).<sup>41</sup>

**Figure 6: Shared Non-Resident Judges' Chambers, U.S. Court of Appeals for the Third Circuit, February 11, 2016**



**Before:** A typical, individual Third Circuit non-resident appellate judge's chambers before the renovation. Chambers typically had three rooms, including a reception area, the judge's office, and another room for law clerks.



**After:** Newly built, shared staff office space for visiting appellate judges' law clerks, with doors to judges' offices visible beyond. Each judge can travel with up to four staff, whose desks can be seen here. Reconfigured chambers are shared by four visiting judges and up to 16 total staff members.

Sources: Photographs taken by GAO. GAO analysis of information and interviews with court officials. | GAO-17-134

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<sup>41</sup> According to circuit officials, this solution better utilized existing space and prevented them from having to expand into the adjacent federal building or a new courthouse. According to circuit officials, the circuit avoided paying for a more traditional project for four chambers (located outside the Byrne Courthouse), which they estimated would cost \$6 million for construction and \$240,000 or more in annual rent.

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**Shared appellate courtroom:** The Seventh Circuit's headquarters in Chicago features an appellate courtroom with a sliding seal, supporting shared use by both the court of appeals and the district court. A space planning official with the Seventh Circuit said that different court units should be encouraged to share courtrooms when they are collocated and can be physically configured properly for both types of proceedings (see fig. 7).

**Figure 7: Shared Courtroom, U.S. Court of Appeals for the Seventh Circuit, May 20, 2016**



**Shared courtroom:** One of two Seventh Circuit appellate courtrooms. This courtroom is capable of being used by the court of appeals and the district court.

**Movable seal:** By sliding a portion of the wall, the circuit changes the appellate courtroom to a courtroom for the Northern District of Illinois.

Sources: Photographs taken by GAO. GAO analysis of information and interviews with court officials. | GAO-17-134

## Most Circuits Are Considering Reductions or Changes to Appellate Courtrooms' or Chambers' Use

Most circuit officials with whom we spoke said they expect changes may be necessary in how they use appellate courtrooms or judges' chambers as they look to further reduce space as part of the space offset requirements of the No Net New policy. With regard to appellate courtrooms, as previously mentioned, two circuits said they are considering, or have discussed, seeking changes in the way oral arguments are scheduled in order to use appellate courtrooms more efficiently and reduce the need for space. For example, space planning officials for the Fourth Circuit said that their appellate court has considered scheduling oral argument sessions more often throughout the year and rotating appellate judges' participation in oral arguments, a change that would decrease the number of courtrooms needed for oral arguments in the circuit's Richmond, VA, headquarters. In another example, a space planning official for the Ninth Circuit said that the

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appellate court has considered extending the length of oral argument sessions, which would allow panels of judges to hear more oral arguments per sitting, potentially resulting in higher appellate courtroom utilization rates and reduce the need for space. However, as previously mentioned, AOUSC officials noted that some circuits have a small number of appellate courtrooms; therefore, adjusting oral-argument-scheduling practices may not enable those circuits to reduce courtroom space. With regard to appellate judges' chambers, while the Third Circuit is the only appellate court to have renovated the layout of existing non-resident judges' chambers to better utilize existing space, 7 of the remaining 10 circuits that have non-resident chambers (excluding the D.C. Circuit, which has none) reported viewing the sharing of non-resident appellate chambers as likely in the future, based on anticipated space needs and the need to essentially freeze the footprint, as required by the No Net New policy. For example, the chief judge of the First Circuit told us that while a large number of appellate judges are, or will soon be, eligible to take senior status, the circuit is already using all its appellate chambers space in the Moakley courthouse located in Boston, MA. He said that appellate judges in the circuit are considering whether to begin sharing non-resident chambers among its visiting judges as appellate judges take senior status.<sup>42</sup> Some circuits have already begun to share non-resident appellate chambers. For example, the Ninth Circuit's space-planning officials demonstrated how they use removable, magnetic nameplates to assign 11 non-resident appellate judges to nine visiting chambers.

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### Circuits Face a Variety of Challenges to Reducing and Improving Use of Appellate Space

Circuits' space-planning officials stated that they face a number of challenges to reducing and improving the use of their appellate space. These challenges include:

*Obstacles to releasing space:* GSA and circuit officials with whom we spoke noted that GSA has recently implemented a standardized process for agencies that wish to release space prior to the end of the occupancy term and said that assuming appropriate criteria are met, GSA regions have generally been timely in doing so. However, space-planning officials from six circuits said that security and traffic pattern requirements at courthouses can put certain appellate spaces off-limits for release, since

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<sup>42</sup>As described earlier, appellate judges who are eligible to retire may decide to continue to hear cases on a part-time basis as "senior judges."

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GSA must consider marketability and suitability of released space for other potential tenants. In addition, if a circuit's appellate space is not marketable in its existing configuration but could be made so through renovation, then the space may be released to GSA only if the judiciary funds the needed alterations.<sup>43</sup> Such an expense can prove challenging if the circuit does not have the needed funds.

*Uncertainty of judicial appointments and senior judges:* Officials we spoke to at nine circuits expressed concerns about making space-planning decisions in the face of uncertainty about (1) when appellate judges will be appointed to fill vacant seats and (2) when appellate judges will take senior status and replacement judges for them will be appointed. In both cases, circuit space-planning officials at nine circuits said they could suddenly be faced with needing significant chambers space in a short amount of time. For example, the Second Circuit's space-planning officials noted that between vacancies and judges eligible to retire, they could, at any time, need to find chambers space for up to seven additional judges.

*Historic buildings limit potential for space reductions:* Space-planning officials we spoke to at seven circuits noted that appellate courthouses are typically older buildings and said that renovating historic buildings can be costly, highly regulated, and often limited in scope by antiquated space configurations. For example, the Second Circuit's space-planning officials said at the historic Thurgood Marshall U.S. Courthouse in New York, NY, the projected high cost of removing walls to modernize office space has caused them to leave the walls in place. Also, according to officials at six circuits, high costs for extensive renovations often lengthen return-on-investment calculations.

*Appellate space reductions will become increasingly difficult:* While circuits have made progress reducing appellate space as part of the judiciary's national 3 percent space-reduction target, most circuit officials we spoke to said future appellate space reductions required by the No Net New policy will become increasingly difficult, in part, because circuits have focused on appellate space that has been easier to reduce to date—such as circuit libraries and unneeded storage or office space, as discussed later in the report.

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<sup>43</sup>See GSA Pub. Bldg. Serv., Pricing Desk Guide, 4th Ed. at § 5.3.2.

## AOUSC Is Working to Provide Information to Circuits to Assist in Space Reduction Efforts

The AOUSC, under the direction of the Judicial Conference’s Committee on Space and Facilities, is working to assist the circuits’ space reduction efforts by sharing information on space reduction with court staff. Specifically, AOUSC officials reported sharing information and providing support through a variety of means, including: (1) providing guidance in the *Design Guide* on alternative workplace design options; (2) providing information on space reduction strategies and options through the judiciary’s intranet, including policies, informational articles, case studies, and video presentations; (3) providing staff program support to circuits; and (4) through presentations at meetings of Judicial Councils and committees, advisory councils and groups, and other events. For examples of space reduction information and support provided to circuits by AOUSC, see table 6.

**Table 6: Examples of Space Reduction Information and Support Provided by the Administrative Office of the U.S. Courts (AOUSC)**

Category	Description
<i>U.S. Courts Design Guide</i>	Chapter 18 of the <i>Design Guide</i> provides information on best practices for the Integrated Workplace Initiative and related office-space designs. Two of the nine court units to which the chapter applies are appellate units: the court of appeals clerk’s office and the circuit executive’s office.
Policies and informational articles (judiciary’s intranet)	AOUSC has published judicial policies and articles on space reduction efforts, including an article about the Third Circuit’s shared non-resident appellate judges’ chambers project in Philadelphia, PA. In addition, AOUSC refers to a series of seven topical articles on space reduction as a tool kit, which covers topics such as “Assessing Space for Potential Reduction Projects” and “Funding and Other Incentives.”
Project case studies and information sheets (judiciary’s intranet)	AOUSC provides space-reduction projects’ case studies through its intranet across four categories: <ul style="list-style-type: none"> <li>• Releasing underutilized space</li> <li>• Integrated workplace initiative projects</li> <li>• Records management projects</li> <li>• Partnerships between court units</li> </ul>
Video Presentations (judiciary’s intranet)	AOUSC provides links to an overview video presentation on its intranet regarding space reduction called “The Time is Now” and a video case study called “Flagship Office Saves Money, Improves Work Environment.”
AOUSC support to circuits	AOUSC facilities program staff provides support to circuits on all space reduction projects, including by providing policy guidance, expediting funding requests, participating in working sessions and meetings, and working with GSA and the contractors throughout the duration of a project, among other activities.
AOUSC communication with advisory councils and groups	AOUSC officials reported that AOUSC staff discusses space reduction policies and implementation via the Judiciary’s Advisory Councils and Groups structure, which is designed to obtain advice and input on policy issues and gather and share best practices. In addition, AOUSC officials reported that Assistant Circuit Executives and other AOUSC staff have presented an update to these bodies on the Third Circuit shared non-resident chambers project.

Category	Description
Judicial conference and circuit judicial council meetings	AOUSC officials reported that space reduction, innovative projects, and national progress toward the three percent reduction target have been discussed at meetings of the Judicial Conference and some of its committees and at numerous local circuit judicial council and space committee meetings across the country. In addition, AOUSC officials reported that AOUSC facilities and security officials have discussed these issues, including innovative projects, directly with court staff and judges at many local circuit judicial council and space committee meetings.

Source: GAO analysis of documentation from the AOUSC. | GAO-17-134

## Most Circuits Believe Appellate Space Reductions Will Become Increasingly Difficult; However, Additional Information Could Help Guide Circuits

As previously discussed, while circuits have made progress reducing appellate space, most circuit officials we spoke to said future appellate space reductions required by the No Net New policy will become increasingly difficult. As circuits have focused on appellate space that has been easier to reduce to date—such as circuit libraries and unneeded storage or office space—GSA regional and circuit officials noted that national space-reduction policies have had a positive impact in incentivizing circuits to reduce appellate and other space. However, circuit officials said that remaining space types, such as appellate courtrooms and judges’ chambers, may be more difficult to reduce or reconfigure. While appellate courtrooms and judges’ chambers made up about half of all appellate space in fiscal year 2015, as previously mentioned, space reduction projects involving courtrooms and judges’ chambers made up about a quarter of all appellate space reduction projects, completed and under way, from fiscal year 2013 through March 2016.<sup>44</sup> Also, as discussed, most circuit officials with whom we spoke said they expect changes may be necessary in how they use appellate courtrooms or judges’ chambers as they look to further reduce space as part of the No Net New policy. However, AOUSC and circuit officials noted that making changes to courtrooms and judges’ chambers may require adjustments in appellate culture and established patterns of how judges use these spaces, when and how often they meet, and how much chambers space they expect to receive. According to judicial and GSA officials, appellate judges and staff traditionally expect the square footage allocated in the *Design Guide* for space they occupy—such as for appellate judges’ chambers suites—and these expectations play a role in space allocation decisions. Ultimately, according to AOUSC and circuit officials, it is the appellate judges themselves who must determine

<sup>44</sup>Includes all appellate space reduction projects completed and planned, as measured in usable square feet, between fiscal year 2013 and March 2016.

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whether these changes are appropriate for their circuit. AOUSC officials added that since the amount of space dedicated to appellate courtrooms and judges' chambers differs from circuit to circuit, the ability to reduce space requirements by making changes to appellate courtroom or chambers use will vary.

While circuits' space-planning officials discuss various types of space reduction projects and have access to space-reduction project information provided by AOUSC on its intranet, with the exception of the project described below, there is currently no additional information available to circuits on innovative or cost-effective appellate courtroom and chambers design or use. After assessing the information described earlier that AOUSC provides to circuits, we found limited information specifically addressing judges' chambers design and use, and no information that addressed courtroom designs that could facilitate courtroom sharing between courts or potential changes to oral arguments' scheduling that could improve use of appellate courtrooms. For example, while AOUSC has provided information to circuits on the one completed project involving shared non-resident appellate judges' chambers, it has not provided further information that could help circuits explore whether other types of innovative approaches could be feasible or appropriate—such as design options or strategies for sharing or better using appellate judges' chambers space and courtrooms. In addition, while the recently published chapter of the *Design Guide* provides information on Alternative Workplace Strategies and designs, these concepts are typically not applied to appellate courtrooms or judges' chambers, as the *Design Guide* states these space-saving design approaches are specifically applicable to court office space.

AOUSC officials agreed with GAO's assessment that limited information is available concerning innovative appellate courtroom and judge's chambers design or use options. However, AOUSC officials noted that if regional circuits are interested in such options, they could ask AOUSC or other circuits for this information. As previously discussed, while AOUSC has shared project information on the Third Circuit's non-resident appellate judges' chambers project with circuits, we found there was at least one additional innovative design option for which there was no shared information—the shared appellate courtroom in the Seventh Circuit. We also found examples of alternative oral arguments' scheduling practices that could help reduce the need for appellate courtroom space, as mentioned above. AOUSC officials agreed that appellate space reductions will become increasingly difficult and said that, moving forward, they could provide additional information for circuits considering



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reductions in, or changes to, appellate courtrooms or judges' chambers design and use.

Federal standards for internal control recognize that communicating quality information that is gathered and shared internally is vital for an entity to achieve its objectives.<sup>45</sup> As government-wide efforts continue to focus on the need to better utilize existing real property assets in order to promote efficiency and leverage limited government resources, one way agencies can become better stewards of government resources is through enhancing information sharing and coordination. We have previously noted the importance of information sharing among federal entities and identified various practices for enhancing coordination among entities, such as through frequent communication.<sup>46</sup> As a 2014 memorandum to all U.S. judges from the Judicial Conference made clear, the judiciary has solicited new ideas for reducing space, and encouraged communication about new ideas between circuits and AOUSC.<sup>47</sup> Reducing the judiciary's rent by reducing space in order to save jobs is the top space-related priority for all circuits, according to the Judicial Conference. Consequently, according to the 2014 memo, judges, circuits, local courts, and court units are all encouraged to communicate and share information on new ways to reduce the judiciary's rent by reducing space.

Given the decentralized nature of the judiciary's decision making for appellate and other space use and needs, and the array of challenges the circuits reported facing in reducing space now and in the future, AOUSC could serve a unique role moving forward in gathering and sharing information from various circuits specifically on unique practices or strategies circuits could use to successfully reduce or better use existing appellate courtroom and judges' chambers space through innovative courtroom and judges' chambers design or use. As circuits across the country have searched for additional ways to reduce space, they could

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<sup>45</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>46</sup>GAO, *Underutilized Facilities: DOD and GSA Information Sharing May Enhance Opportunities to Use Space at Military Installations*. [GAO-15-346](#) (Washington, D.C.: June 18, 2015).

<sup>47</sup>Committee on Space and Facilities of the Judicial Conference of the United States, *Judicial Conference Policies on Space Reduction (Important Information)*, Memorandum to All United States Judges from Judge D. Brooks Smith, Chair, January 15, 2014.

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benefit from the AOUSC's leading a concerted, centrally managed information-sharing effort that could:

*Help circuits determine feasibility:* By fully documenting and sharing additional information on innovative courtroom and judges' chambers designs, scheduling practices, or sharing arrangements, including ways circuits can evaluate whether shared non-resident appellate judges' chambers could work for them, AOUSC could assist those circuits that are considering the feasibility of these strategies as a way to meet future space-reduction requirements in their circuit. Further, this information could assist the Judicial Conference in determining if additional guidance on appellate courtroom and judges' chambers design or use is needed.

*Assist circuits' space-planning staff:* In an environment in which decision making is decentralized—as it is in the federal judiciary—and space-planning staff typically make recommendations to appellate judges, who may not have previously considered innovative space-saving options for appellate courtrooms and judges' chambers, having access to well-organized information provided by AOUSC on innovative or successful practices could strengthen the ability to pursue new approaches and options. Some officials with whom we spoke noted that changes to appellate courtroom or judges' chambers design and use may, in some cases, also require a change in the culture of the court along with changes in the way these spaces are used by appellate judges and their staff.

*Prevent missed opportunities:* According to AOUSC, given anticipated funding levels and space reduction initiatives, serious consideration needs to be given to reconfiguring and re-purposing space already in the judiciary's space inventory. Especially in an environment of limited resources, without additional information, circuits may miss opportunities to explore innovative or cost-effective appellate courtroom and judges' chambers design or uses as circuits plan to meet future space-reduction requirements, such as space offset requirements of the No Net New policy. As one circuit's space-planning official noted, while the potential exists to reduce appellate courtrooms and judges' chambers space in his circuit, there is no incentive to do so on the part of the judges, in part, because no national direction or guidance exists to suggest specifically directing circuits to share or reduce appellate courtrooms or chambers. Instead, AOUSC data show that the circuit has focused primarily on library and staff office space to meet national space-reduction policies.

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## Conclusions

As the judiciary's overall rent costs hovered near \$1 billion, the Judicial Conference and circuit judicial councils put into place policies and practices that now provide circuits with tools and incentives to reduce space—and circuits have made progress in reducing appellate space. Many of the actions taken so far for appellate space have been to reduce and reuse circuit libraries due, in part, to changes in technology and use of these spaces over time. However, given the ways appellate judges use courtrooms and non-resident judges' chambers, there may be an opportunity for circuits to consider other types of non-traditional or innovative strategies for projects that save appellate space or use existing space better. The Third Circuit's shared non-resident appellate chambers project, the Seventh Circuit's shared appellate courtroom design, and appellate discussions on potentially changing scheduling methods to increase efficient courtroom use indicate that there is room for circuits to explore further options of how they can reduce or make better use of appellate space. As each appellate court explores its options, and makes decisions concerning its own space needs, additional information that could assist them in rethinking their existing practices for space use and configuration could help the judiciary realize additional savings in a time where its resources are limited and it faces an array of challenges to reducing space. To date, while AOUSC has played an important role by sharing information with circuits on space reduction strategies, there has been no centrally managed effort on the part of the judiciary to document and share practices for innovative space-saving design and use practices for appellate courtrooms and judges' chambers. As circuits' space-planning staff and appellate judges consider the steps they will take to achieve remaining space reductions—which officials said will become increasingly more difficult over time as easier projects are completed—such additional information sharing could help circuits consider all appellate space reduction options available to them, some of which they may not be aware of.

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## Recommendation

To provide circuits with information needed to help guide future space-reduction and use decisions, we recommend that the Director of AOUSC document and share additional practices on innovative and cost-effective use or design of appellate courtrooms and judges' chambers, such as scheduling, redesign, and sharing arrangements, and any other potential approaches, with all regional circuits in order to help them determine the feasibility of these options for their circuit.

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## Agency Comments

We provided a draft of this report to AOUSC and GSA for review and comment. AOUSC provided written comments on the draft, which are reprinted in appendix IV. In commenting on a draft of this report, AOUSC stated that the judiciary appreciates and takes seriously the recommendation and findings in the report and will give them careful consideration. AOUSC and GSA also provided technical clarifications that we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, Director of AOUSC, and the Administrator of GSA. In addition, the report is available at no charge on our Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or [shear@gao.gov](mailto:shear@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "Rebecca Shea". The signature is fluid and cursive, with the first name "Rebecca" and the last name "Shea" clearly distinguishable.

Rebecca Shea  
Acting Director, Physical Infrastructure Issues

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to examine: (1) policies and practices that guide space use decisions for federal courts of appeals; (2) trends in rent, space occupied, and use of courtrooms and other space for federal courts of appeals; and (3) actions the judiciary has taken to reduce or improve use of appellate space, including any related challenges and the extent to which it has shared information to support such efforts.

To understand how federal courts of appeals use their courtrooms and other space, what policies and practices guide their space use decisions, as well as to identify actions taken to reduce or better use appellate space, any challenges faced, and the extent to which the judiciary has shared information to support its efforts, we reviewed relevant statutes, GSA and judicial space policies and guidance, information on the judiciary's appellate space-reduction projects, and our prior reports related to the federal judiciary. We also interviewed officials from all 12 of the judiciary's regional circuits, including appellate judges, court staff, and space-planning officials, and visited a non-generalizable sample of seven appellate courthouses in the Third, Fourth, Seventh, and Ninth circuits and the District of Columbia. We chose site visit locations based on various factors, including characteristics of the circuits and appellate courts, such as number of case filings, location and number of appellate courthouses, and the scale of appellate space-reduction projects—in order to include courts in diverse locations with a variety of caseloads, space reductions, and other characteristics. We also interviewed relevant officials with GSA's 11 regional offices who work with the judiciary on space needs and issues and officials from GSA's central office and the Administrative Office of the U.S. Courts (AOUSC) about space use policies and appellate decision making. We assessed the judiciary's efforts to share information and achieve desired results for reducing its space, including its appellate space, against pertinent federal standards for internal control—standards that include plans, methods, and procedures used to meet missions, goals, and objectives.<sup>1</sup>

To examine the rent and space occupied by the U.S. Courts of Appeals, we analyzed nationwide judiciary rent data generated from GSA's billing

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<sup>1</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September, 2014). Internal control is an integral component of an organization's management that provides reasonable assurance that objectives related to the following are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. The judiciary is not required by law to abide by *Standards for Internal Control in the Federal Government*, but these tenets are consistent with the management practices of leading organizations.

system from fiscal years 2009 through 2015.<sup>2</sup> These data consist of monthly billing information, such as rent paid, rentable square feet, and assigned court unit from GSA's "Rent on the Web" system and additional information, such as usable square feet, from GSA's "Occupancy Agreement Tool."<sup>3</sup> In order to analyze trends over time, we used unique occupancy agreement numbers to examine monthly inventory snapshots from GSA's Rent on the Web—one for each month between October 2008 and September 2015—to provide information on the characteristics of space occupied by the U.S. Courts of Appeals during each fiscal year under review. Using unique occupancy agreement numbers, we matched these rent data with GSA's Occupancy Agreement data to provide information on usable square feet. We analyzed data on appellate space from fiscal years 2009 through 2015, including rent paid, square footage, court unit, and whether space was federally owned or leased. We reviewed GSA's information on the judiciary's Agency/Bureau code designations to provide information related to various court units (e.g., Circuit Executive, Central Legal Staff, and Circuit Libraries). To determine whether these data were of sufficient reliability for our analysis, we reviewed the paperwork associated with the databases and discussed various data elements with GSA staff responsible for the data. We also conducted our own electronic testing to check the consistency of the data and to reconcile the accuracy of certain occupancy agreement numbers. We did not attempt to evaluate or test all of the aspects of the GSA data files, but instead focused on data related to the U.S. Courts of Appeals. As a result of our review and discussions, we determined that the data were sufficiently reliable for the purposes of examining the rent and characteristics of the space occupied by the appellate courts from fiscal years 2009 through 2015.

We conducted our work from November 2015 to December 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

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<sup>2</sup>We analyzed data from fiscal years 2009 through 2015 because 2009 was the first fiscal year for which GSA could provide billing information by court unit, and fiscal year 2015 was the most recent complete fiscal year in which GSA billing data by court unit were available.

<sup>3</sup>According to GSA, rentable square feet is space that is available for a tenant to occupy plus common areas such as restrooms, lobbies, and hallways—and is used by GSA to measure tenant space occupied for billing purposes—while usable square feet includes space that is available for a tenant to occupy, but may not include common areas—and is used by the judiciary to set national space reduction goals and measure progress towards those goals.

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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.

# Appendix II: Case Filings and Authorized Judges by Circuit for U.S. Courts of Appeals

**Table 7: Appellate Cases Filed and Orally Argued by Circuit, Fiscal Year 2015**

U.S. Court of Appeals	Number of cases filed	Number of cases heard by oral argument
First Circuit	1,504	289
Second Circuit	4,416	786
Third Circuit	3,251	221
Fourth Circuit	4,662	293
Fifth Circuit	7,443	801
Sixth Circuit	4,478	590
Seventh Circuit	2,926	613
Eighth Circuit	2,952	427
Ninth Circuit	11,870	1,507
Tenth Circuit	1,956	347
Eleventh Circuit	6,115	414
D.C. Circuit	1,125	288

Source: GAO analysis of judiciary data. | GAO-17-134

Note: This table does not include data for the Federal Circuit.

**Table 8: Number of Authorized and Actual Appellate Judgeships by Circuit, as of October 2016**

U.S. Court of Appeals	Authorized number	Actual number (authorized number less vacancies) plus senior judges
First Circuit	6	6 plus 4 senior judges
Second Circuit	13	13 plus 9 senior judges
Third Circuit	14	13 plus 11 senior judges
Fourth Circuit	15	15 plus 2 senior judges
Fifth Circuit	17	15 plus 6 senior judges
Sixth Circuit	16	15 plus 8 senior judges
Seventh Circuit	11	9 plus 3 senior judges
Eighth Circuit	11	10 plus 6 senior judges
Ninth Circuit	29	28 plus 16 senior judges
Tenth Circuit	12	12 plus 7 senior judges
Eleventh Circuit	12	11 plus 8 senior judges
D.C. Circuit	11	11 plus 6 senior judges
Federal Circuit	12	12 plus 6 senior judges
<b>Total</b>	<b>179</b>	<b>262</b>

Source: GAO analysis of information from and interviews with court officials. | GAO-17-134



# Appendix III: Courtrooms' and Oral Arguments' Scheduling Practices for U.S. Courts of Appeals

Table 9: Courtrooms' and Oral Arguments' Scheduling Practices for U.S. Courts of Appeals

U.S. Court of Appeals	Courthouse location(s) <sup>a</sup>	Number of courtrooms <sup>b</sup>	Number of oral argument sittings in fiscal year 2015 <sup>c</sup>	Total Number of cases heard by oral argument in fiscal year 2015 <sup>d</sup>	Typical oral arguments' scheduling practices
First Circuit	Boston, MA (HQ)	2	41	289	Term: Aug. – June (11 mos.) Sitting Schedule: 1 week per month (11 weeks) Courtrooms used: 1-2
	San Juan, PR	1	9		Term: November and March (2 mos.) Sitting Schedule: 1 week per month (2 weeks) Courtrooms used: 1 (shared with district court)
Second Circuit	New York, NY (HQ)	2	229	786	Term: Aug. – June (11 mos.) Sitting Schedule: daily, with the exception of one week in December Courtrooms used: 1-2  Note: As caseload demands, oral arguments are also heard in July.
Third Circuit	Philadelphia, PA (HQ)	2	94	221	Term: Sept. – June (10 mos.) Sitting Schedule: 34 weeks Courtrooms used: 2
Fourth Circuit	Richmond, VA (HQ)	6	93	293	Term: Sept. – May (9 mos.) Sitting Schedule: 6 weeks Courtrooms used: 6 Term: Sept. – May (9 mos.)
	Baltimore, MD	2	1		Sitting Schedule: Oral arguments are not typically heard in Baltimore, MD. Courtrooms used: 1
Fifth Circuit	New Orleans, LA (HQ)	3	157	801	Term: Jan. – Dec. (12 mos.) Sitting Schedule: 15-20 weeks Courtrooms used: 3
	Houston, TX	1	16		Term: Jan. – Dec. (12 mos.) Sitting Schedule: 1-5 weeks Courtrooms used: 1 (shared with district court)
Sixth Circuit	Cincinnati, OH (HQ)	3	122	590	Term: Jan. – Dec. (12 mos.) Sitting Schedule: 14 weeks Courtrooms used: 3
Seventh Circuit	Chicago, IL (HQ)	2	94	613	Term: Jan. – Dec. (12 mos.) Sitting Schedule: 26 weeks Courtrooms used: 1-2 (1 courtroom shared with district court)

**Appendix III: Courtrooms' and Oral Arguments'  
Scheduling Practices for U.S. Courts of  
Appeals**

<b>U.S. Court of Appeals</b>	<b>Courthouse location(s)<sup>a</sup></b>	<b>Number of courtrooms<sup>b</sup></b>	<b>Number of oral argument sittings in fiscal year 2015<sup>c</sup></b>	<b>Total Number of cases heard by oral argument in fiscal year 2015<sup>d</sup></b>	<b>Typical oral arguments' scheduling practices</b>
Eighth Circuit	St. Louis, MO (HQ)	4	70	427	Term: Sept. – June (10 mos.) Sitting Schedule: 6 weeks Courtrooms used: 1-4
	St. Paul, MN	3	50		Term: Sept. – June (10 mos.) Sitting Schedule: 7 weeks Courtrooms used: 1-3
	Kansas City, MO	1	10		Term: Sept. – June (10 mos.) Sitting Schedule: 2 weeks Courtrooms used: 1
	Omaha, NE	1	10		Term: Sept. – June (10 mos.) Sitting Schedule: 2 weeks Courtrooms used: 1
Ninth Circuit	<i>San Francisco, CA (HQ)</i>	5	165	1,507	Term: Oct – Sept. (12 mos.) Sitting Schedule: 1-2 weeks per month Courtrooms used: 4
	<i>Pasadena, CA</i>	3	160		Term: Oct – Sept. (12 mos.) Sitting Schedule: 1-2 weeks per Month Courtrooms used: 3
	<i>Portland, OR</i>	1	25		Term: Oct – Sept. (12 mos.) Sitting Schedule: 1 week approx. 6 times per year Courtrooms used: 1
	<i>Seattle, WA</i>	3	46		Term: Oct – Sept. (12 mos.) Sitting Schedule: 1 week approx. 8 times per year Courtrooms used: 3  Note: Appellate judges for the ninth circuit typically sit to hear oral arguments 32 days per year. The appellate court also typically sits for one week three times a year in Hawaii, using a bankruptcy courtroom, and one week per year in Alaska, using a district courtroom.
Tenth Circuit	Denver, CO (HQ) <sup>e</sup>	4	68 <sup>f</sup>	347	Term: Sept., Nov., Jan., Mar., May (5 mos.) Sitting Schedule: 1 week per month (5 weeks) Courtrooms used: 4  Note: The appellate court for the tenth circuit will also sit in the summer months, as needed.

**Appendix III: Courtrooms' and Oral Arguments'  
Scheduling Practices for U.S. Courts of  
Appeals**

<b>U.S. Court of Appeals</b>	<b>Courthouse location(s)<sup>a</sup></b>	<b>Number of courtrooms<sup>b</sup></b>	<b>Number of oral argument sittings in fiscal year 2015<sup>c</sup></b>	<b>Total Number of cases heard by oral argument in fiscal year 2015<sup>d</sup></b>	<b>Typical oral arguments' scheduling practices</b>
Eleventh Circuit	<i>Atlanta, GA (HQ)</i>	3	70	414	Term: Oct. – Sept. (12 mos.) Sitting Schedule: 14 weeks Courtrooms used: 2
	Montgomery, AL	1	12		Term: Oct. – Sept. (12 mos.) Sitting Schedule: 3 weeks Courtrooms used: 1
	Jacksonville, FL	1	16		Term: Oct. – Sept. (12 mos.) Sitting Schedule: 4 weeks Courtrooms used: 1
	Miami, FL	1	46		Term: Oct. – Sept. (12 mos.) Sitting Schedule: 10 weeks Courtrooms used: 1
D.C. Circuit	Washington, D.C. (HQ)	1	105	288	Term: Sept. – May (9 mos.) Sitting Schedule: throughout the month Courtrooms used: 1 (plus 1 courtroom on loan from the district court, used as needed)

Source: GAO analysis of judiciary data and information provided by court officials. | GAO-17-134

<sup>a</sup>Italicized courthouse locations indicate appellate courthouses that house no other court units.

<sup>b</sup>With the exception of the U.S. Court of Appeals for the Second Circuit in New York, NY, and the U.S. Court of Appeals for the District of Columbia, all appellate headquarters had one en banc courtroom that could accommodate all appellate judges in the circuit. Appellate courts with whom we spoke said that their judges sit en banc anywhere from 1–4 times per year.

<sup>c</sup>Sittings during the 12-month period ending Sept. 30, 2015. A sitting is any time three or more appellate judges sit together as a panel to hear oral argument. For example, if a courthouse has one courtroom and judges are sitting on a particular day to hear one or more cases, that would be considered one sitting. In another example, if a courthouse has two courtrooms in which different appellate judges are hearing oral arguments simultaneously in different courtrooms on the same day, that would be considered two sittings. According to judicial officials with whom we spoke, appellate judges may hear anywhere from 1–6 appeals cases per sitting.

<sup>d</sup>Cases heard during the 12-month period ending Sept. 30, 2015.

<sup>e</sup>There are also 2 courtrooms assigned to the U.S. Court of Appeals for the Tenth Circuit in Kansas City, KS. However, these courtrooms are rarely used by the appellate court, according to circuit officials, but instead are used as district court special proceedings courtrooms and rent for these courtrooms is paid by the district courts.

<sup>f</sup>The U.S. Court of Appeals for the Tenth Circuit held 9 additional sittings outside of their Denver, CO headquarters during fiscal year 2015.

# Appendix IV: Comments from the Administrative Office of the U.S. Courts



## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

JAMES C. DUFF  
Director

WASHINGTON, D.C. 20544

November 23, 2016

Ms. Rebecca Shea  
Acting Director  
Physical Infrastructure Issues  
Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Ms. Shea:

The Judiciary has received and reviewed the draft report related to the study on the U. S. Courts of Appeals Space Utilization, entitled: *FEDERAL JUDICIARY: Progress Made in Reducing Appellate Space, but Innovative Practices Should be Shared across Courts* (GAO-17-134). The Judiciary takes seriously the findings and recommendation in this report and will give them careful consideration.

We would like to express our appreciation for the recognition of the Judiciary's efforts to reduce its space footprint and contain its future growth. We also appreciate the report's assessment of the space reduction challenges faced by the courts of appeal, in particular, given their unique operations and facilities. The essential functions and responsibilities of the nation's appellate courts, as well as the historic buildings in which those courts operate, determine the flexibility they have to reduce, repurpose, or return space in a cost-effective manner without negatively impacting court security or operations. In fact, the varied and unique space needs and challenges across all courts were what led the Judiciary to take a portfolio-wide approach to space reduction. This decentralized approach, empowering each circuit to manage its own space on a circuit-wide basis, has been critical to the success of our space reduction efforts. Decentralization has fostered local innovation and resulted in space decisions tailored to local conditions and local court processes.

Finding additional opportunities for innovative ways to increase space utilization will be a priority as all courts continue to work within the Judiciary's "No Net New" policy. As GAO's report recognizes, the AO regularly informs the courts about efforts to reduce space and uses a variety of communication methods to share the innovations and best practices employed by all courts to contain space growth. We will continue to evaluate new ways to gather information about innovative practices deployed by the courts of appeal to maximize the efficient use of space across their varied portfolio and to share those with the courts.

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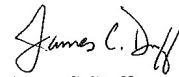
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Ms. Rebecca Shea  
Page 2

We also anticipate sharing additional information on several court of appeals space reduction efforts, including the redesign of visiting chambers space in the Third Circuit's Philadelphia headquarters. That project, which involved the redesign of a single visiting chambers into a suite of offices able to accommodate four visiting judges and staff, reached a significant milestone and is now fully complete and in use by judges. We plan to disseminate information focusing on the actual experiences of judges using this space. The Third Circuit has offered to host judges and staff from other courts briefly to provide them an opportunity to experience the benefits of this efficient design. Similarly, we plan to document another ongoing Third Circuit project to eliminate costly leased space by housing the Third Circuit's legal staff within a portion of the current circuit library space. As we have done with other projects, we will provide information to the courts on the unique design elements and programmatic changes that will make this project a model for creative mixed use of such space.

If you have any questions regarding this response, please contact Leslie Campbell, Senior Management Analyst, Administrative Office of the United States Courts at (202) 502-1587.

Sincerely,



James C. Duff  
Director

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Shea, (202) 512-2834 or [SheaR@gao.gov](mailto:SheaR@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, David Sausville (Assistant Director), Jean Cook (Analyst in Charge), Melissa Bodeau, Gary Guggolz, Geoffrey Hamilton, Terence Lam, SaraAnn Moessbauer, Malika Rice, Minette Richardson, and Kelly Rubin made key contributions to this report.

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