



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 23 2019

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We write to provide our views on H.R. 2502, the Transparency in Federal Buildings Projects Act of 2019. As to the general desirability of the Act, we defer to other Departments. However, as we explain below, the Act raises a constitutional concern.

The Act would add a new section 3318 to 40 U.S.C. chapter 33. New section 3318(a) would require the General Services Administration to publish on its website certain prospectuses already outlined in chapter 33 for proposed expenditures on "public buildings," space to be leased for public purposes, and alterations to buildings leased for public purposes. *See* 40 U.S.C. §§ 3307(b), 3316. These prospectuses would contain information, including the location and description of buildings to be constructed, altered, or acquired, or space to be leased, estimated costs, and justifications for the proposed expenditures. *Id.* New section 3318(a)(3) would also require the published prospectuses to be inclusive of at least a ten-year period.

Requiring public disclosure of these prospectuses would interfere with the President's control over national security information. *See Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988); *Access to Classified Information*, 20 Op. O.L.C. 402, 404 (1996) (stating "that a congressional enactment would be unconstitutional if it were interpreted to divest the President of his control over national security information in the Executive Branch" (internal quotation marks omitted)). Although chapter 33 excepts from the definition of "public buildings" anything "which the President considers to be justified in the public interest," 40 U.S.C. § 3301(a)(5)(C)(ix), this exception does not extend to space leased for public purposes or alterations to buildings leased for public purposes. Accordingly, we recommend including an exception in new section 3318, as proposed by the Act, for when publishing a prospectus would not be in the national interest. We would otherwise treat the publication requirement in a manner consistent with the President's constitutional authority over national security information, including by withholding information where necessary.

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this

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or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink that reads "Prim Escalona". The signature is written in a cursive style with a large, prominent initial "P".

Prim F. Escalona
Principal Deputy Assistant Attorney General

cc: The Honorable Sam Graves
Ranking Member