

LEASE AND OCCUPANCY AGREEMENT (OA) MANAGEMENT PROCEDURES

- 1. REASON FOR ISSUE:** This Directive articulates policy for management of VA's real property leases and space assignments through General Services Administration (GSA) Occupancy Agreements (OAs) and provides Department-level guidance for their management, planning, acquisition, and disposition.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This Directive sets forth VA's framework for the life-cycle management of its leasehold interests and space assignments. The Directive outlines the parameters by which Under Secretaries, Assistant Secretaries, and Other Key Officials are to structure their activities to ensure VA direct leased or GSA-assigned space satisfies VA's mission requirements and performance goals and are supportive of the Secretary's priorities. The updated Directive distinguishes leasehold interests from GSA space assignments and reflects use of the Strategic Capital Investment Planning (SCIP) process.
- 3. RESPONSIBLE OFFICE:** The Office of Management (OM) (004).
- 4. RELATED DIRECTIVES/HANDBOOKS:** VA Handbook 7816, Lease and OA Management Procedures; VA Directive 7815, Acquisition of Real Property by Lease and by Assignment from GSA; VA Directive 0056, VA Sustainable Buildings Program; VA Directive 0011, SCIP Process
- 5. RESCISSIONS:** VA Directive 7816, Lease Management Procedures, dated August 22, 2003.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
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LEASE AND OA MANAGEMENT PROCEDURES

1. PURPOSE. This directive articulates VA's policy and provides Department-level guidance for planning, acquiring, managing, and disposing of leased real property and space assignments through GSA OAs. This directive is not intended to provide policy or guidance for VA's Enhanced-Use Leasing authority or use of space agreements pursuant to VA's sharing authority under [38 U.S.C. § 8153](https://www.law.cornell.edu/uscode/text/38/8153) (<https://www.law.cornell.edu/uscode/text/38/8153>). Program-specific guidance comprises one of the five key components of VA's corporate capital asset policy, VA Directive 4085, Capital Asset Management. This policy addresses the need to establish a uniform, Department-wide framework for the life-cycle management of VA's leasehold and space assignment interests.

2. POLICY.

- a. This directive outlines the parameters by which Under Secretaries, Assistant Secretaries, and Other Key Officials are to structure activities to ensure VA direct leases and space assignments satisfy the mission requirements and performance goals of the Department and are supportive of the Secretary's priorities. Lease contracts and space assignments need to be negotiated and managed in a prudent and fiscally sound manner to ensure VA obtains the best value for its resources.
- b. VA has significant resources invested in direct leases and space assignments across the nation. Effective management of this portfolio requires that the Department implement a comprehensive and consistent approach to satisfying space needs. For example, an underutilized capital asset, while under the operational control of a given Administration or Staff Office, should be viewed as a VA asset that can be leveraged to satisfy space requirements throughout the Department.
- c. It is not the intent of this policy to address the detailed transaction-level procedures required to operationally acquire, manage, and dispose of leasehold interests. It is the responsibility of each Under Secretary, Assistant Secretary, and Other Key Officials to provide this operational guidance, ensuring procedures are consistent with VA policies and GSA policies as applicable.

3. RESPONSIBILITIES.

- a. **Assistant Secretary for Management and Chief Financial Officer** shall participate in setting VA's capital asset management policy direction and ensures the fiscal integrity of VA's portfolio of assets.
- b. **Under Secretaries, Assistant Secretaries and, Other Key Officials** shall:
 - (1) Participate in setting Departmental capital asset lease policy direction.

- (2) Ensure that the policies set forth in this directive and accompanying handbook are implemented within their respective organizations and field activities.
 - (3) Identify staff to lead and serve as subject matter experts for OAs in support of the SCIP Panel and Board established through [VA Directive 0011, SCIP Process](https://www.va.gov/vapubs/search_action.cfm?dType=1) (https://www.va.gov/vapubs/search_action.cfm?dType=1).
- c. **Executive Director, OAEM, Office of Management (OM)** shall be responsible for providing Department-level oversight in the capital asset arena (including leases and OAs) to ensure a consistent and cohesive Department approach to capital asset management inclusive of requirements development, budgeting, scoring compliance, GSA delegation, and future portfolio planning.
 - d. **Executive Director, Office of Construction and Facilities Management (CFM), Office of Acquisition, Logistics, and Construction (OALC)** shall be responsible for VA's Leasing Program, including leasing policy, guidance, and training pertaining to procurement, staff certification, lease construction standards, oversight and administration, and collaboration with OAEM on scoring compliance. In practice, such responsibilities are delegated to CFM's Office of Real Property along with execution of Mid-Level and Major Lease procurements for the department that utilize GSA's delegated lease acquisition authority. The Executive Director is also responsible for the planning, design, and construction of facilities for the Department in collaboration with Veterans Health Administration (VHA) Health Care Environment and Facilities Programs (HEFP), including determining architectural and engineering requirements and ensuring compliance of the Department with applicable laws relating to the construction program of the Department, major construction project management, planning real property acquisitions, disposals and management, design and construction standards for health care, memorial and regional benefits facilities; management of seismic corrections, physical security, historic preservation of VA facilities and State Home Design Review.
 - e. **SCIP Panel** scores all business cases at established threshold levels published through the annually issued call memorandum and provides recommendations to the SCIP Board for approval of any significant process changes, plan approvals, decision criteria changes, weights, and project lists.
 - f. **SCIP Board** provides oversight over the SCIP process and has leadership representation from OM, Office of Enterprise Integration, VHA, Veterans Benefits Administration, National Cemetery Administration, Office of Information & Technology, Human Resources & Administration, and OALC. The SCIP Board provides feedback and guidance on the development of SCIP action plans; and reviews and approves or disapproves SCIP Panel recommendations regarding any significant process changes, plan approvals, decision criteria changes, weights, and prioritized projects lists used for budget submission preparation.

- g. **Office of the General Counsel (OGC) Real Property Law Group or OGC District Contract Law National Practice Group (as applicable)** shall review lease procurement documents for legal sufficiency in accordance with agency policies and procedures.
- h. **VHA HEFP** shall provide corporate leadership, directing activities relating to the planning, acquisition, management, and disposal of all capital assets, including the management of all VHA leases and GSA OAs. HEFP shall work with VHA field leadership to prioritize leases and communicate to the SCIP Board how the leases reflect VHA’s strategic priorities.
- i. **OM, OALC, VHA** shall support implementation of this directive and corresponding handbook as applicable in accordance with the following direct lease functional area responsibility matrix:

Functional Area	Departmental Policy/Guidance/Training	Operations/Execution
Portfolio Oversight	OM	OM
Requirements Development (SCIP)	OM	VHA (with OALC support for Major & Mid-Level Leases)
Budgeting	OM	VHA
Scoring Compliance	OM (with OALC support)	OALC and/or VHA
GSA Delegation	OM	OALC and/or VHA
Procurement	OALC	OALC and/or VHA
Leasing Staff Certification	OALC	OALC and/or VHA
Construction Oversight	OALC	OALC and/or VHA
Contract Administration	OALC	OALC and/or VHA
Future Portfolio Planning	OM and VHA	OALC and VHA

4. REFERENCES.

- a. [Antideficiency Act \(31 U.S.C. § 1341\)](https://www.law.cornell.edu/uscode/text/31/1341)
(https://www.law.cornell.edu/uscode/text/31/1341)
- b. [Congressional Approval of Proposed Projects \(40 U.S.C. § 3307\)](https://www.law.cornell.edu/uscode/text/40/3307)
(https://www.law.cornell.edu/uscode/text/40/3307)

- c. [Congressional Approval of Certain Medical Facility Acquisitions \(38 U.S.C. § 8104\)](#)
([https://uscode.house.gov/view.xhtml?req=\(title:38%20section:8104%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:38%20section:8104%20edition:prelim)))
- d. [Federal Acquisition Regulation](#) (<https://www.acquisition.gov/?q=browsefar>)
- e. [Federal Acquisition Streamlining Act of 1994](#)
(<https://www.congress.gov/bill/103rd-congress/senate-bill/1587/text>)
- f. [Federal Management Regulation Part 102-73 - Real Estate Acquisition, 41 CFR Part 102-73](#) (<https://www.govinfo.gov/app/details/CFR-2001-title41-vol3/CFR-2001-title41-vol3-part102-id375>)
- g. [Federal Management Regulation Part 102-83 - Location of Space, 41 CFR, Part 102-83](#) (<https://www.govinfo.gov/content/pkg/CFR-2016-title41-vol3/pdf/CFR-2016-title41-vol3-part102-id1725.pdf>)
- h. [Federal Property and Administrative Services Act, as amended \(40 U.S.C. § 471 et seq.\)](#)
(<https://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1&edition=prelim>)
- i. [General Services Acquisition Manual \(GSAM\)](#) (General Services Acquisition Manual (GSAM) | Acquisition.GOV)
- j. [General Services Administration, Public Buildings Service, Leasing Desk Guide \(LDG\), including Leasing Alerts and Lease Acquisition Circulars](#)
(<https://www.gsa.gov/real-estate/real-estate-services/leasing/leasing-policy>)
- k. [Government Performance and Results Act of 1993](#)
(<https://www.congress.gov/bill/103rd-congress/house-bill/826?r=390>)
- l. [‘Honoring our PACT Act of 2022 \(Pub. L 117-168\)](#)
(<https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf>)
- m. [Office of Asset Enterprise Management \(OAEM\)](#)
(<https://department.va.gov/administrations-and-offices/management/asset-enterprise-management/>)
- n. [Office of Management and Budget Capital Programming Guide](#)
(https://www.whitehouse.gov/wp-content/uploads/2021/01/capital_programming_guide.pdf)
- o. [Office of Management and Budget Circular A-11](#)
(<https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>)

- p. [Office of Real Property - Office of Construction & Facilities Management](https://www.cfm.va.gov/realproperty/)
(<https://www.cfm.va.gov/realproperty/>)
- q. [Sharing of health-care resources \(38 U.S.C. § 8153\)](https://www.law.cornell.edu/uscode/text/38/8153)
(<https://www.law.cornell.edu/uscode/text/38/8153>)
- r. [VA Directive 0011, Strategic Capital Investment Planning \(SCIP\) Process](https://www.va.gov/vapubs/search_action.cfm?dType=1)
(https://www.va.gov/vapubs/search_action.cfm?dType=1)
- s. [VA Directive 0056, VA Sustainable Buildings Program](https://www.va.gov/vapubs/search_action.cfm?dType=1)
(https://www.va.gov/vapubs/search_action.cfm?dType=1)
- t. [VA Directive 7815, Acquisition of Real Property by Lease and by Assignment from General Services Administration \(GSA\)](https://www.va.gov/vapubs/search_action.cfm?dType=1)
(https://www.va.gov/vapubs/search_action.cfm?dType=1)
- u. [VA Lease Authority \(38 U.S.C. § 8103\)](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section8103&num=0&edition=prelim)
(<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section8103&num=0&edition=prelim>)
- v. [VA's Supplement to General Services Administration \(GSA\) Leasing Desk Guide](https://vaww.cfm.va.gov/real/RPPM201806AdoptionofGSALeasingDeskGuide.pdf)
(<https://vaww.cfm.va.gov/real/RPPM201806AdoptionofGSALeasingDeskGuide.pdf>)

5. DEFINITIONS.

- a. **Capital Asset Inventory (CAI).** The database of record for VA's real property portfolio, including owned and leased real property assets (e.g., land, building, or structure). It facilitates the full life-cycle management of assets from proposed, operational/steady state, to disposal, closure/expiration, or termination of the asset.
- b. **Capital Lease.** Per [OMB Circular A-11 Appendix B](https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf)
(<https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>), capital lease means any lease other than a lease-purchase that does not meet the criteria of an operating lease.
- c. **Direct Lease.** Any real property lease contract awarded by a VA Lease Contracting Officer.
- d. **Due Diligence.** Due diligence can be defined as making a reasonable effort to provide accurate, complete information. A typical example of due diligence is a study that precedes the leasing of a property. Due diligence considers the physical, financial, legal, and social characteristics of the capital asset and its expected mission performance.
- e. **Enterprise Lease Management Tool (ELMT).** An application that provides an interface for submitting documents, entering lease tracking data, and receiving

feedback from OAEM prior to submitting lease delegation requests to GSA in GSA Real Estate Exchange (GREX). The ELMT also serves as a dynamic reporting tool that helps to track lease milestones and lease processing timelines.

- f. **GREX.** A business process tool that facilitates the lease delegation and post-award submission processes between GSA and federal agencies.
- g. **Lease, Leasehold Interest in Real Property.** “Lease” or “leasehold interest in real property” means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.
- h. **Lease Expansion.** Modification of an existing lease contract to add space. Expansions can be within or outside the scope of the existing contract.
- i. **Lease Extension.** Extension of the expiration date of a lease to provide for continued occupancy on a short-term basis with substantially the same terms and conditions. An extension is generally executed when there are evolving agency requirements, delays in delivery of a new or new/replacing lease, or delays in a move to other federally controlled space.
- j. **Lease Renewal (Options).** The right, but not the obligation, of the Government to continue a lease upon specified terms and conditions, including lease term and rent.
- k. **Major Lease.** The term “Major Lease” or “Major Level Lease” means the net average annual rent for the term of the lease (including options periods and excluding the cost of services) is equal to or greater than the prospectus level threshold amount for the fiscal year in which award is to be made, requiring the prior submission and approval of a prospectus. The prospectus threshold for VA is the “major medical facility lease threshold” as defined in [38 U.S.C. § 8104\(a\)\(3\)\(B\)\(i\)](https://uscode.house.gov/view.xhtml?req=granuleid:USC-2012-title38-section8104&num=0&edition=2012) (https://uscode.house.gov/view.xhtml?req=granuleid:USC-2012-title38-section8104&num=0&edition=2012), excluding the cost of services.

[Pub. L 117-168 § 703\(b\)](https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf) (https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf) amended VA’s threshold to an average annual rent equal to or greater than GSA’s threshold under [40 U.S.C. § 3307\(a\)](https://uscode.house.gov/view.xhtml?req=(title:40%20section:3307%20edition:prelim)) (https://uscode.house.gov/view.xhtml?req=(title:40%20section:3307%20edition:prelim)), which is subject to adjustment in accordance with [40 U.S.C. § 3307\(h\)](https://uscode.house.gov/view.xhtml?req=(title:40%20section:3307%20edition:prelim)) (https://uscode.house.gov/view.xhtml?req=(title:40%20section:3307%20edition:prelim)). GSA’s annual prospectus threshold for FY2024 is \$3,613,000. All costs that are amortized, including initial build-out/tenant improvements, are to be included in the net average annual rent computation. Contemplated leases calling for a stepped rent or a change in the base rent, must be “levelized” in accordance with [Chapter 11 of GSA's Leasing Desk Guide](#)

(https://www.gsa.gov/system/files/General/LDG_Chapter_11_FINAL_07012022_Cdocx.pdf) to determine whether a lease is above or below this threshold.

- l. **Mid-Level Lease.** The term “Mid-Level Lease” means leases exceeding \$1,000,000 in annual unserviced rent (net average annual rent for the term of the lease, including option periods and excluding the cost of services) but less than the Major Level Lease threshold.
- m. **Minor Lease.** The term “Minor Lease” or “Minor Level Lease” means leases of \$1,000,000 or less in annual unserviced rent (net average annual rent for the term of the lease, including option periods and excluding the cost of services).
- n. **New or New/Replacing Lease.** A lease with new terms and conditions and a new lease contract number, applicable for either a new requirement or for the replacement of an existing expiring lease.
- o. **Occupancy Agreement (OA).** Means a written agreement descriptive of the financial terms and conditions under which GSA assigns, and a customer agency occupies, the GSA-controlled space identified therein.
- p. **Operating Lease.** Per [OMB A-11 Appendix B](#) (<https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>), a lease that meets all nine criteria listed below:
 - (1) Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease term.
 - (2) The lease does not contain a bargain-price purchase option.
 - (3) The lease term does not exceed 75% of the estimated economic life of the asset.
 - (4) The present value of the minimum contractually required payments over the life of the lease does not exceed 90% of the fair market value of the asset at the beginning of the lease term.
 - (5) The asset is a general purpose asset rather than being for a special purpose of the Government and is not built to the unique specification of the Government as lessee.
 - (6) There is a private sector market for the asset.
 - (7) There is no provision of Government financing and no explicit Government guarantee of third-party financing.

- (8) Risks incident to ownership of the asset (e.g., financial responsibility for destruction or loss of the asset) remain with the lessor unless the Government was at fault for such losses.
- (9) The project is not constructed on government land.
- q. **SCIP Process.** A Department-wide planning process designed to inform an annual capital budget development process and estimate future funding requirements. SCIP provides an annually updated comprehensive plan to improve the quality, access, and cost efficiency of the delivery of VA benefits and services through modern (i.e., newer and/or better conditioned) facilities that match the location and demands, both current and future.

SCIP identifies capital projects over a 10-year planning horizon required to address performance gaps in a variety of areas: safety, security, utilization, access, seismic, facility condition, space, parking, and energy. The SCIP process includes a formal executive review process and is approved by the Secretary to ensure the Plan is closely aligned with the Department's strategic goals and mission.

The SCIP process results in a prioritized list of potential planned budget year projects (major and minor construction and Major, Mid-Level and Minor Leases, including OAs), as well as potential future year projects to correct the identified performance gaps. Refer to VA [Directive 0011](https://www.va.gov/vapubs/search_action.cfm?dType=1) (https://www.va.gov/vapubs/search_action.cfm?dType=1) for more information related to the SCIP process.

- r. **Simplified Lease Acquisition Threshold.** At the time of publication, the Simplified Lease Acquisition Threshold (see Federal Acquisition Regulation [2.101](https://www.acquisition.gov/far/2.101) (https://www.acquisition.gov/far/2.101) and [FAR Class Deviation 2018-O0018](https://www.acq.osd.mil/dpap/policy/policyvault/USA002260-18-DPC.pdf) (https://www.acq.osd.mil/dpap/policy/policyvault/USA002260-18-DPC.pdf) when applied to the average annual amount of unserviced rent for the term of the lease, including option periods and excluding the cost of services, is \$250,000.
- s. **Succeeding Lease.** A non-competitive (sole source) lease acquisition secured to cover continued occupancy of the current premises at the end of a lease term without a break in tenancy. It establishes new terms and conditions and has a new lease contract number. A succeeding lease is generally used where acceptable new locations are not identified or are identified, but a cost benefit analysis indicates an award to other than the current lessor will result in substantial relocation costs and duplication costs to the Government, and the Government cannot expect to recover such costs through competition.
- t. **Superseding Lease.** A new lease that replaces an existing lease prior to expiration. It is procured following non-competitive sole source procedures. It establishes new terms and conditions and has a new lease contract number.

The Government considers executing a superseding lease to replace an existing lease when the Government needs numerous or detailed modifications to a space that would cause complications or substantially change the existing lease. A superseding lease should be considered where market rates have changed substantially.