

**ACQUISITION OF REAL PROPERTY BY LEASE AND BY ASSIGNMENT  
FROM GENERAL SERVICES ADMINISTRATION**

- 1. REASON FOR ISSUE:** To provide policy and responsibilities for the acquisition of space by direct lease and through assignment from the General Services Administration (GSA).
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive sets forth the policies and responsibilities for acquiring space through direct lease and GSA space assignments. The directive contains:
  - a. Approval authorities to initiate and execute leasing actions;
  - b. Updated policy concerning Standard and Simplified Lease Acquisition Procedures;
  - c. Updated dollar thresholds for prospectus leases;
  - d. Notification, approval, and reporting requirements; and
  - e. Policy for coordination of space assignments and lease actions with GSA.
- 3. RESPONSIBLE OFFICE:** The Office of Construction & Facilities Management (CFM) is responsible for the contents of this directive.
- 4. RELATED HANDBOOK:** VA Directive 7815, Acquisition of Real Property by Lease and by Assignment from General Services Administration, dated April 22, 1998.
- 5. RESCISSIONS:** VA Directive 7815, Acquisition of Real Property by Lease and by Assignment from General Services Administration, dated April 22, 1998.

**CERTIFIED BY:**

/s/  
Roger W. Baker  
Assistant Secretary  
for Information and Technology

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

/s/  
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**ACQUISITION OF REAL PROPERTY BY LEASE AND BY ASSIGNMENT  
FROM THE GENERAL SERVICES ADMINISTRATION**

## **1. PURPOSE**

This directive implements and establishes policy for the acquisition of space within the Department of Veterans Affairs (VA) by direct lease (through VA Leasing Authority) and by General Services Administration (GSA) assignment.

## **2. POLICY**

VA requires that requests for leased space be processed as part of the Strategic Capital Investment Program (SCIP), requirements outlined in the current year SCIP call memorandum guidance. Activities with a need for procurement of leased space must ensure that SCIP approval requirements of their Administration or Staff Office are met. In addition to any SCIP requirements, other approvals are needed based on the type and amount of space requested and the requesting organization.

### **a. VA Approval Authorities to Initiate Lease Procurements.**

(1) For leases less than 10,000 net usable square feet (nurf) or 100 parking spaces, up to a 10-year term, and less than \$300,000 unserviced annual rent, approval levels are:

(a) For Veterans Health Administration (VHA) leases, the approval authority is the Director of the Veterans Affairs Medical Center (VAMC), Veterans Integrated Service Network (VISN), or independent VA outpatient clinic when funding for VHA lease costs is available locally and a determination has been made that the lease will not be a capital lease. The local fiscal officer will certify that funds are available to support the lease. The network contracting manager or Head of Contracting Activity (HCA) will determine appropriate acquisition methods. For proposed Readjustment Counseling Service (RCS) leases, the RCS regional manager is the approving official and will certify that funds are available to support the lease.

(b) For non-VHA leases, the approval authority is the appropriate Under Secretary, Assistant Secretary, or Other Key Official.

(2) For leases at or more than 10,000 nurf, 100 parking spaces, or a 10-year term but less than \$300,000 unserviced annual rent, approval levels are:

(a) For VHA leases, the approval authority is the Director, Office of Construction & Facilities Management (003C), with the concurrence of the Deputy Under Secretary for Health for Operations and Management (10N - DUSHOM).

(b) For non-VHA leases, the approval authority is the Director, CFM, with the concurrence of the appropriate Under Secretary, Assistant Secretary, or Other Key Official.

(3) Leases between \$300,000 and \$1,000,000 unserviced annual rent. For VHA and non-VHA leases, the approval authority is the Secretary.

(4) For leases \$1,000,000 and above in unserviced annual rent, approval levels are:

(a) For VHA leases, the approval authority is the Secretary. Approved actions must be authorized by Congress (prospectus-level lease) per Title 38 U.S.C. section 8104(a)(2) (as amended by section 301(a), Public Law 102-405 and Public Law 110-387), which requires statutory authorization prior to the appropriation and obligation of funds for all major medical facility leases (i.e., those that have an annual unserviced rent of \$1,000,000 and above), including those for parking facilities.

(b) For non-VHA leases, the approval authority is the Secretary. After approval of any new lease of real property with unserviced annual rent of \$1,000,000 or more, Section 211 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act (note that the Public Law number changes annually) requires that the Secretary submit a written report to the Committees on Appropriations of Congress and mandates a 30-day Congressional notification period (Congressional notification lease) during which no award can be made. Subsequently, GSA will procure and execute the lease. Actions above the current GSA prospectus level will require submission in GSA's budget. Lease proposals previously approved by the Secretary for inclusion in the Departmental budget require no further VA approval.

**b. Acquisition of Space by VA.**

(1) VHA Requests for Space. VA maintains statutory authority through 38 U.S.C. sections 8101 and 8103 to lease all types of medical space, regardless of size. Once approved (see paragraph 2(a)(1)(a) above), space under 10,000 nulf or 100 parking spaces and less than \$300,000 in unserviced annual rent can be directly procured by a local eligible contracting officer. Requests above local authority thresholds, per this directive, shall be sent from the VAMC Director through the VISN Director to Real Property Service (003C1E - RPS). VHA space requirements shall be based on workloads projected to the currently approved year for official VA workload projections and the application of VA space planning criteria, as found in the online CFM Technical Information Library (<http://www.va.gov/facmgt/standard/spacework/space.asp>) (formerly VA Handbook 7610, Handbook H-08-09, "Criteria for VA Facilities," Program Guide 7610, and Handbook H-08-05, "Equipment Guide List").

**(2) Non-VHA Requests for Space Under 2,500 nulf.** VA may enter into leases for non-VHA space of 2,500 nulf and under. Non-VHA elements may seek contracting assistance from local VHA eligible contracting officers or Real Property Service (003C1E – RPS). Alternatively, warranted contracting officers in non-VHA elements may seek a lease contracting eligibility determination from 003C1E – RPS.

**c. Assignments of Space by GSA.**

(1) VHA Requests for Space Outside the GSA National Capital Region. Instances may arise in which it becomes advantageous to obtain space through a space assignment from GSA. Such requests for space originating from VAMCs, VISNs or independent outpatient clinics are bound by the approval requirements set forth in paragraph 2(a) and shall be prepared using GSA Standard Form (SF) 81, Request for Space, or equivalent, as approved by GSA. Once approved, the GSA SF-81 can be transmitted directly to GSA for space assignment and the Occupancy Agreement (OA) between GSA and VHA can be signed by VHA. The OA authorizes GSA to obtain space through either a space assignment in Federal buildings within GSA's inventory or a lease of commercial space.

(2) Non-VHA Requests for Space Over 2,500 nulf. For leases between 2,500 and 19,999 nulf, non-VHA elements, through 003C1E – RPS, may seek delegation from GSA. As part of the GSA delegation request, non-VHA elements may seek contracting assistance from local VHA eligible contracting officers or 003C1E – RPS. GSA grants no delegations for procurement of space in excess of 19,999 nulf.

(a) VA Central Office (VACO) Requests for Space. The Deputy Assistant Secretary for Administration (03) is delegated responsibility for acquisition and oversight of all VACO space in the GSA National Capital Region. Requests for VACO space are submitted to the Office of Administration, Space and Renovations Service (03R), for approval and action. If a request for additional space cannot be accommodated in existing VACO leased space, then 03R will work with GSA to lease the required space. All additions to the VACO space inventory must be approved by the Secretary and Congress must be notified.

(b) All Other. Each Staff Office or other activity authorized to procure space must follow its own established procedures before seeking a GSA delegation or requesting procurement of space from GSA. Approving officials will sign occupancy agreements for GSA-procured space.

**d. VA Direct Leases.**

VA Direct Leases. VA Direct Leases must follow the established formats and procedures found in VA Handbook 7815, including all authorization and procurement procedures. Additionally, VA Direct Leases must follow the GSA regulations as established by the General Services Administration Acquisition Regulation (GSAR).

(1) Simplified Lease Acquisition Procedure (SLAP). The SLAP may be used only for award of leasing actions when the average annual base rent over the term of the lease, including all options, is \$150,000 or less, excluding the cost of operational services, such as utilities and interior janitorial services. The eligible contracting officer must also determine that the extent of the special purpose build-out is not too great to allow effective use of SLAP.

(2) Department of Defense (DOD) Base Closures. All requirements of this directive apply to those projects which are leases entered into pursuant to VHA Directive 10-95-100, "DOD Base Closure Sites and Their Potential for Use as VA Health Care Facilities." In addition, such leases shall not be used as a means of circumventing or otherwise failing to comply with the Office of Management and Budget (OMB) requirements for obtaining title to DOD bases subject to the Base Realignment and Closure Act. OMB requirements include paying fair market value for such property unless an OMB waiver of such payment is granted. Appropriated funds may not be expended for other than routine maintenance or minimal work to make the property functional unless VA has an interest in the subject real property greater than a DOD permit, license, or other revocable authority. Leases entered into for real property declared excess pursuant to DOD base closure statutes and regulations will be reviewed by the Office of General Counsel (025A).

### 3. RESPONSIBILITIES

a. **Secretary of Veterans Affairs.** The Secretary will:

- (1) Approve lease projects at or above \$300,000 in unserviced annual rent.
- (2) Execute Congressional notification letters.
- (3) Approve prospectus-level projects by inclusion in VA's annual budget submission.

b. **Director, Construction & Facilities Management (CFM).** The Director, CFM will:

- (1) Develop policies and procedures to implement VA's leasing program.
- (2) Issue changes to this Directive as necessary to manage VA's leasing program.
- (3) Approve lease projects under \$300,000 in unserviced annual rent but over 10,000 nsf, 100 parking spaces, or a 10-year term.
- (4) Process project requests at or above \$300,000 in unserviced annual rent through 003C1E – RPS.
- (5) Provide delegations to procure space through 003C1E – RPS to eligible contracting officers.

**Note:** All questions concerning VA leasing of real property should be directed to 003C1E – RPS. A listing of 003C1E – RPS staff members with telephone, email, and fax contact information can be found at <http://vaww.cfm.va.gov/real/>.

c. **Under Secretaries, Assistant Secretaries and Other Key Officials.** Under Secretaries, Assistant Secretaries and Other Key Officials will:

- (1) Approve leasing requirements and funding for their respective organizations prior to submitting requests for procurement approval .
- (2) Develop policies and procedures to comply with VA's leasing policies.
- (3) Provide training in leasing policies and procedures.
- (4) Issue directives, policies, information letters in order to successfully manage the varying components of VA's leasing program.

d. **VA Contracting Officers.** Eligible VA contracting officers will:

- (1) Negotiate, execute and administer leases that fall under the delegated threshold and those delegated from CFM.
- (2) Report through their Network Contract Managers and Contract Managers for the Program Offices, per the VHA Acquisition Realignment Implementation memo (dated January 27, 2009).
- (3) Implement Contract Review Teams and Contract Review Boards for the appropriate action categories per the Integrated Oversight Process Information Letter (IL 001AL-09-02), dated June 19, 2009.
- (4) Adhere to Competition in Contracting Act (CICA) requirements
- (5) Ensure compliance with Davis-Bacon Act requirements. The Davis-Bacon Act is applicable to all construction, alteration, or repair of public buildings or public works in excess of \$2,000, including such work within buildings in which VA is seeking a leasehold interest.
- (6) Comply with the requirements of the GSAR, Federal Acquisition Regulation (FAR), and VA Acquisition Regulation (VAAR).
- (7) Comply with all other references to applicable laws and executive orders as contained in Appendix A.
- (8) Comply with the FAR, subpart 1.602-3, VAAR, subpart 801.602, and VA Directive and Handbook 7401.7 (Unauthorized Commitments and Ratification), for unauthorized commitments made by eligible contracting officers including, but not limited to, exceeding their warrant authority.
- (9) Categorize the lease as an operating or capital lease per OMB Circular A-11. If the determination is made that the action is a capital lease, the lease request/package must be

submitted to 003C1E – RPS for review and appropriate approval/authorization before proceeding (see Appendix B).

(10) Receive review and concurrence from Regional or General Counsel, as appropriate, prior to issuance of the Solicitation for Offers and again prior to award.

(11) Support Readjustment Counseling Service (RCS) by procuring Vet Center lease requirements.

#### 4. REFERENCES:

- a. Procedures for OMB Circular A-94, Benefit Cost Analysis, dated October 29, 1992
- b. GSA FMR Bulletin 2008-B1, dated November 19, 2007
- c. VA Directive 7816, Lease Management Procedures, dated August 22, 2003
- d. VHA Handbook 1006.1, Planning and Activating Community Based Outpatient Clinics, dated May 19, 2004
- e. Integrated Oversight Process Information Letter (IL 001AL-09-02), dated June 19, 2009.

#### 5. DEFINITIONS

**a. Benefit Cost Analysis (BCA).** The methodology utilized to compare the relative advantages of procuring the following three interests in real property: (1) a leasehold interest; (2) a fee simple interest in improved real property; and (3) a fee simple interest in unimproved real property which the government will improve by new construction.

**b. Capital Lease.** Per OMB Circular A-11 Appendix B, capital lease means any lease other than a lease-purchase that does not meet the criteria of an operating lease (see 5.g. for definition of operating lease).

**c. Delegated Threshold.** The upper limits of what can be procured by an eligible contracting officer without further delegation. The current threshold can be found in section 2.a(1).

**d. Eligible Contracting Officer.** An eligible contracting officer is an individual who has met VA's warrant requirements and has the authority to enter into, administer, and/or terminate contracts; make related findings and determinations; and has completed the four GSA-required lease courses. Warranted contracting officers must obtain a lease contracting eligibility determination from 003C1E – RPS prior to executing lease contracts.

**e. Lease or Leasehold Interest in Real Property.** A conveyance to the government of the right of exclusive possession of real property for a definite period of time by a landlord or lessor. It may include operational services provided by the landlord or lessor.

**f. Leasing Authority.** The Federal Property and Administrative Services Act, as amended, (Title 40 United States Code (U.S.C.) section 471 et seq.) gives the Administrator of GSA the authority to procure and manage real property and assign it to Federal agencies. Specifically, the Administrator is authorized to enter into leases for terms not exceeding 20 years (40 U.S.C. section 490(h)).

**g. Net Usable Square Footage (nurf).** The measurement of the assignable space used by the Agency's personnel, equipment, and furnishings defines nurf. It is measured to the inside finish of the dominant portion (e.g., window glass line) of permanent exterior walls. It also includes circulation within the space assignment. This definition is similar to American National Standards Institute/Building Owners & Managers Association (ANSI/BOMA) space as defined by GSA.

**h. Operating Lease.** Per OMB Circular A-11 Appendix B, operating lease means a lease that meets all the criteria listed in Appendix B. If the criteria are not met, the lease will be considered to be a capital lease or a lease-purchase, as appropriate.

**i. Prospectus.** A prospectus is a statement required to justify a proposed project when its cost exceeds a legislatively established threshold. A prospectus includes information on the project's size, cost, location, and other features and is submitted to the appropriate House and Senate authorizing committees.

**j. Solicitation for Offers (SFO).** A written document that the government uses to communicate the exact minimum specifications of its space requirements to potential offerors.

**k. Unserviced Rent.** Unserviced rent is the base rent, including real estate taxes, insurance, and any amortized build-out, but excluding operating expenses.

**l. VA Delegation of Authority.** The Secretary has delegated leasing authority to the Office of Construction & Facilities Management (003C). VA Directive 7815 re-delegates leasing authority for specific leasing actions to local Veterans Health Administration (VHA) eligible contracting officers for certain types of leases.

**m. VA Leasing Authority.** VA is authorized to acquire leasehold interests in property through specific legislative authority. The majority of the leasing VA performs is under the authority of the Secretary as authorized by Code of Federal Regulations (CFR) chapter 1, of title 38. Title 38 U.S.C., section 8103 gives the Secretary the authority to lease land or interests in land necessary for use as a medical facility. VA has general authority to lease all medical and medically-related space without further GSA delegation, as stated in Federal Management Regulation (FMR) 41 CFR, section 101-18.104-1(h)(2), subject to limitations contained in 41 CFR, 101-18.105. Title 38 U.S.C., section 8109 authorizes the Secretary to

obtain parking facilities for employees, visitors, and other individuals having business at VA medical facilities.

**List of Applicable Laws and Executive Orders  
With Which All Leases Must Comply**

1. Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58)
2. Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157)
3. Assignment of Claims Act of 1940 (31 U.S.C. §§ 3727)
4. Balanced Budget Act of 1997 (2 U.S.C. §§ 900 et seq.)
5. Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.)
6. Competition in Contracting Act of 1984 (41 U.S.C. §§ 251 et seq.)
7. Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613)
8. Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. §§ 3701-3708)
9. Copeland Act of 1934 (18 U.S.C. § 874; 40 U.S.C. § 3145 (a))
10. Covenant Against Contingent Fees (41 U.S.C. § 254 (a))
11. Davis-Bacon Act of 1931 (40 U.S.C. §§ (40 U.S.C. 3141-3148)
12. Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707)
13. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. § 7701-7706)
14. Energy Conservation Policy Act of 1992 and 2005 (42 U.S.C. § 8253 et seq.)
15. Examination of Records (41 U.S.C. § 254d)
16. Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. §§ 471 et seq.)
17. Federal Property Management Regulation, Subchapter D, Public Buildings and Space, Part 107-17, Assignment and Utilization of Space (41 CFR Subchapter D, Appendix, Temp. Reg. D-1)
18. Federal Property Management Regulation Subchapter D, Public Buildings and Space, Part 101-18, Acquisition of Real Property (41 CFR Part 101-18)
19. Federal Urban Land Use Act (40 U.S.C. §§ 531 et seq.)

20. Federal Water Pollution Control Act of 1972 (Clean Water Act), as amended (33 U.S.C. §§ 1251-1263 and elsewhere)
21. Fire Administration Authorization Act of 1992 (15 U.S.C. §§ 2227)
22. Intergovernmental Cooperation Act 1968 (40 U.S.C. §§ 901-905)
23. Leasing Authority (40 U.S.C. § 585)
24. National Environmental Policy Act 1969, as amended, (42 U.S.C. §§ 4321)
25. National Historic Preservation Act of 1966, as amended, (16 U.S.C. §§ 470 et seq.)
26. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-678)
27. Officials Not to Benefit (41 U.S.C. § 22)
28. Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. § 1352)
29. Prompt Payment Act (31 U.S.C. §§ 3901-3907)
30. Prospectus Authority (40 U.S.C. § 3307)
31. Public Buildings Act of 1959, as amended, (40 U.S.C. §§ 601-619)
32. Public Buildings Cooperative Use Act of 1979 (40 U.S.C. §§ 490(a)(16)-(19) 601a and 612a)
33. Randolph-Sheppard Act, as amended, (20 U.S.C. §§ 107 et seq.)
34. Reorganization Plan No. 18 of 1950 (40 U.S.C. §§ 490 note)
35. Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 690)
36. Rural Development Act of 1972 (42 U.S.C. §§ 3122)
37. Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.)
38. Small Business Act, as amended, (15 U.S.C. §§ 631 et seq.)
39. Telecommunications Act of 1996 (47 U.S.C. §§ 332 note)
40. Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.)

41. Treasury. Postal Service and General Government Annual Appropriation Act (P.L. 101-136) November 3, 1989
42. Treasury Postal Service and General Government Annual Appropriation Act (P.L. 104-2081 September 26, 1996, and P.L. 104-134 April 26, 1996)
43. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. §§ 4651-4655 and elsewhere)
44. Executive Order 12411, Work Space Efficiency
45. Executive Order 12072, Federal Space Management
46. Executive Order 11738, Implementation of the Clean Air Act and Water Pollution Act
47. Executive Order 11988, Floodplain Management
48. Executive Order 11990, Protection of Wetlands
49. Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction
50. Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities
51. Executive Order 12941, Seismic Safety of Existing Federally Owned or Leased Buildings
52. Executive Order 13423, Energy Independence and Security Act of 2007
53. Executive Order 13006, Locating Federal Facilities in Historic Properties in Our Nation's Federal Cities
54. Executive Order 13327, Federal Real Property Asset Management
55. Executive Order 13423, Strengthening Federal, Environmental, Energy and Transportation Management

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## DETERMINATION OF CAPITAL OR OPERATING LEASE

When analyzing a possible lease acquisition, if the response to any of the following questions is "yes," the action must be considered a capital lease and Real Property Service (003C1E – RPS) must be contacted before proceeding with the action:

- i. Does ownership of the asset transfer to VA during the term of the lease or shortly after the end of the lease period?
- ii. Does the lease contain a bargain price purchase option?
- iii. Does VA accept all risks of ownership responsibility for destruction or loss of the property?
- iv. Does the lease term exceed 75 percent of the estimated economic life of the asset?
- v. Does the present value of the minimum lease payments over the life of the lease exceed 90 percent of the fair market value of the building at the inception of the lease?
- vi. Is the building not a general purpose building but designed and built to unique specification of VA as Lessee?
- vii. Is there no private sector market for the building?
- viii. Is the building to be constructed on government land?