

ENHANCED-USE LEASING PROGRAM

1. **REASON FOR ISSUE:** To revise Department-wide Enhanced-Use Leasing program policies.
2. **SUMMARY OF CONTENTS:**
 - a. Assigns the Office of Asset Enterprise Management as the office responsible for oversight of the Department's Enhanced-Use (EU) Leasing program and management of the EU projects identified as Departmental asset initiatives.
 - b. Provides clarifying guidance on EU administrative responsibilities, delegations of authority, and financial management of proceeds obtained from EU leases.
3. **RESPONSIBLE OFFICE:** The Office of the Assistant Secretary for Management (004) is responsible for the contents of this directive.
4. **RELATED HANDBOOK:** VA Handbook 7415, Enhanced-Use Leasing Program.
5. **RESCISSIONS:** VA Directive 7415, Enhanced-Use Leasing Program Policies and Procedures, dated June 17, 2008.

CERTIFIED BY:

/s/
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Assistant Secretary for
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**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
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Executive in Charge, Office of Management
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ENHANCED-USE LEASING PROGRAM

1. PURPOSE. This directive revises policies for program responsibilities and implementation of the Department's enhanced-use (EU) leasing program. The Office of Asset Enterprise Management (OAEM), within the Office of Management, has oversight responsibility for the EU leasing program as well as management responsibility for those projects identified as Departmental asset initiatives. This directive provides guidance associated with administrative responsibilities, delegations of authority, and financial management of proceeds obtained through EU leases.

2. POLICY. This directive addresses the following subject areas: EU leasing program policies, reporting requirements in the Capital Asset Management System (CAMS), use of funds, and re-delegations of authority.

a. **Program Policies for Enhanced-Use Leases.** Title 38, U.S.C. §§8161-8169, Enhanced-Use Leases of Real Property, authorizes the Secretary to lease real property under VA's control or jurisdiction to other public or private entities on a long-term basis (up to 75 years) in return for cash and/or "in-kind" consideration (the provision of goods, facilities, construction, services or other activities that result in a demonstrable improvement of services to Veterans) as all or part of the consideration for the lease. The term of the EU lease will be no longer than necessary in order to maximize benefits to the Department.

(1) Under the provisions of the above-described law, the Secretary must comply with the following statutory requirements:

(a) VA must conduct a public hearing in the locality of the contemplated lease after the congressional Veterans' Affairs committees and the public have been given reasonable notice that identifies the time and place for the hearing, identifies the property to be leased and its proposed uses, and describes how the contemplated project would contribute and not be inconsistent with or adversely affect VA's mission; and

(b) Provide the congressional Veterans' Affairs oversight committees with a notice of intent to enter into an enhanced-use lease, and publish this notice in the Federal Register not less than 45 days prior to executing the lease.

(2) Under the enhanced-use leasing authority, VA must abide by all federal environmental and historic preservation laws, e.g., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the National Environmental Policy Act (NEPA), the Resource Conservation and Recovery Act (RCRA), and the National Historic Preservation Act of 1966 (NHPA).

(3) Under the EU leasing authority, VA is not required to follow the Federal Acquisition Regulation (FAR) or the VA Acquisition Regulation (VAAR). However, the enhanced-use leasing process will consider FAR/VAAR guidance where practicable. Conceptually, for example, such guidance is followed in the process of selecting the EU lessee. Non-competitive selections or direct source leases are discouraged. Nevertheless, under limited circumstances as more fully set out in chapter 5, section 9, paragraph b of the handbook, an EU lessee may be directly selected without a competitive process. In all cases, non-competitive selections must be justified as being in the best interests of the Department. For all instances in which a non-competitive selection is being considered, except in the case of statutory exceptions, a "Direct Source Leasing Memorandum" must be reviewed and approved by OAEM (044) and General Counsel (02), generally prior to the public hearing.

b. Reporting Requirements. Milestones, approvals and supporting documents that occur during the formulation, execution, steady-state, and disposal phases of EU lease projects must be reported and attached in CAMS. All reportable information must be entered into CAMS within 10 business days of completion. For non-delegated projects, the portfolio manager is responsible for entering all reportables in CAMS within 5 business days of completion. During the steady state phase, which involves the typical operations and maintenance of an asset through its expected life span, CAMS updates must be inputted in the VA Capital Asset Inventory (CAI) database. Information from the CAI database is pulled into CAMS.

c. Use of VA Funds. Title 38 U.S.C. §8162(b)(4)(B) authorizes the Department to use minor construction funds as a capital contribution to an EU lease (not to exceed currently \$10 million). All VA contributions of funds must first comply with all existing Departmental controls and approvals for the use of such funds. The use of minor construction funds will be coordinated with the involved Administration or staff office.

d. Delegations of Lease Execution Authority. Pursuant to Title 38 U.S.C. §512(a), the Secretary has delegated authority to the Assistant Secretary for Management (AS/M) to execute enhanced-use leases (including any amendments), with authority to re-delegate execution of such leases as set forth in the specific re-delegation. The re-delegation to execute does not include amendments. If an amendment is sought, it must be submitted through the AS/M, who may execute it or re-delegate the authority on an amendment-by-amendment basis. All future re-delegations from the AS/M must be in compliance with the Enhanced-Use Lease Delegation Plan approved by the Secretary on September 10, 2004. Such re-delegations may only be made for EU leasing projects that meet the following criteria:

(1) Government Liability. Projects in which the Department assumes no obligation or liability (other than an outlease of the subject property) for any aspect of the financing of any improvement developed in relation to the lease, nor guarantees any minimum use of the improvement. Projects must be in compliance with applicable OMB scoring guidance.

(2) Value. Projects with a capital cost (including both the lessee's and any VA contribution other than land) below the threshold for major construction (currently \$10 million).

(3) Length of Term. Projects with a lease term not-to-exceed 55 years.

(4) Department-Level Significance. Projects that are not considered "significant asset initiatives" (such as major campus realignments) or are of exceptional visibility (as determined by the Secretary).

e. **Other Permissible Delegations of Authority.** The following steps may be delegated by OAEM: submission of proposed EU projects in annual strategic plans; preparation of concept plans; coordination and documentation of the public hearing, including preparation of the public hearing notice for VACO clearance and release; development and issuance of Request for Expressions of Interest (REI) and Request for Proposals (RFP); selection of a lessee; acquisition of all required legal, historical and environmental documentation; preparation of congressional notification documents for VACO clearance and signature by the Secretary; administration and monitoring of the executed lease and quarterly reporting requirements.

3. RESPONSIBILITIES.

a. **The Department's Chief Financial Officer (CFO)** is responsible for resolving issues within the Department regarding the reimbursement of costs associated with EU leases.

b. **Under Secretaries and Assistant Secretaries** are responsible for resource decisions and development of all matters pertaining to mission objectives, requirements and justification of their projects; the impact of non-departmental EU activities conducted on VA-controlled property; project funding determinations; and establishment of project priorities for their respective EU leasing projects. All EU lease projects must comply with VA Handbook 7415. Administration CFOs shall submit an annual statement by close of September 30 of the previous fiscal year on the status of the funds deposited into the Medical Care Collections Fund in accordance with 38 U.S.C. §8165(a)(1), and on all reimbursements pertaining to the EU leasing program (in accordance with 38 U.S.C. §8165(b)), by individual project, to the Assistant Secretary for Management.

c. **OAEM** is responsible for providing leadership and guidance associated with implementing the EU leasing program; establishing policies, procedures, and guidelines for implementing the program within the Department; devising the appropriate business structures; assessing financial and project feasibility; drafting and/or reviewing necessary documents in coordination with the Office of General Counsel; assuring proper documentation; coordinating with appropriate Departmental offices and activities (and other Federal and non-Federal entities), and finalizing the award and securing the

execution of non-delegated EU leases. OAEM will maintain post-execution operational responsibility for non-delegated EU leasing projects.

d. **The Trust Fund Oversight Office, Office of Finance** is responsible for the financial oversight and managerial reporting of the EU lease funds held in trust. This includes responsibilities for reviewing and overseeing the trust accounts for compliance with generally accepted accounting and auditing standards, compliance with VA financial regulations, monthly and quarterly financial reporting, and yearly audited financial statements.

e. **The Designated VA Representative (DVR)** is appointed by the AS/M and provides the necessary everyday administration, monitoring and management of EU leases (including any service/use agreements) before or after lease execution by the Assistant Secretary for Management for all non-delegated EU leases and provides advice and guidance when requested on re-delegated EU leases. The DVR has the delegated authority to approve payments, disbursements, and reimbursements, and to issue written correspondence needed to properly administer an EU lease. See VA Handbook 7415 for additional information.

f. **The Delegated Local VA Representative (DLVR)** is appointed by the official with the authority to execute a delegated EU lease to provide the everyday administration, monitoring and management of EU leases (including any service/use agreements) for delegated projects. The DLVR's responsibilities include the approval of payments, disbursements and reimbursements, and issuance of written correspondence as needed to properly administer an EU lease. See VA Handbook 7415 for additional information.

g. **The EU Project Leader** is appointed by the DVR and/or DLVR to manage the day-to-day progress of an EU lease from concept paper approval through lease execution, construction and up to 3 months after final completion of the EU lease improvements, unless sooner revoked in writing. (For OAEM controlled projects, the Project Leader will be the assigned Portfolio Manager.) See VA Handbook 7415 for additional information.

4. REFERENCE. Title 38 U.S.C. §§8161-8169, Enhanced-Use Leases of Real Property, as amended.