

VA ENHANCED-USE LEASE PROGRAM

1. **REASON FOR ISSUE.** To revise the Department of Veterans Affairs (VA) Enhanced-Use Lease (EUL) Program policy.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES.** This directive:
 - a. Consolidates and streamlines content from the two VA directives and related VA handbooks listed below as being rescinded.
 - b. Updates the policies, responsibilities and other content to reflect current Federal mandates, including recent changes to VA's EUL authority (38 U.S.C. §§ 8161-8169) in P.L. No. 117-168, Honoring our PACT Act of 2022.
3. **RESPONSIBLE OFFICE.** Office of Management (004), Office of Asset Enterprise Management (044).
4. **RELATED DIRECTIVES/HANDBOOKS:** VA Directive and Handbook 7633, Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal, dated January 11, 2018.
5. **RESCISSIONS:** VA Directive 7415, Enhanced-Use Lease Program, dated September 29, 2017; VA Directive 7454, Enhanced-Use Leasing – Post Transaction, dated June 29, 2012; VA Handbook 7415, Enhanced-Use Leasing Program, dated September 29, 2017; VA Handbook 7454, Enhanced-Use Leasing Post Transaction, dated June 29, 2012.

CERTIFIED BY:

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

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VA ENHANCED-USE LEASE PROGRAM

1. PURPOSE.

- a. This directive updates the Department's Enhanced-Use Lease (EUL) Program management policies to comply with Federal mandates, including 38 U.S.C. §§ 8161-8169, as amended.
- b. It provides direction to the Department for the formulation, execution and steady state/post-transaction phases of EULs.
- c. This directive applies to all VA organizations involved in the EUL Program and EUL projects.

2. POLICY.

- a. **General.** VA is committed to re-developing underutilized assets for the direct and indirect benefit of Veterans via the EUL Program. EUL projects are managed in three stages: 1) formulation (project development through lease signing); 2) execution (following lease signing through the end of construction); and 3) steady state/post-transaction (project operation). The sections following provide policies pertaining to each stage. Detailed guidance pertaining to formulation, execution and post-transaction processes and procedures can be found on the EUL Program's internal website.
- b. **Formulation.** VA facilities, administrations and staff offices and Office of Asset Enterprise Management (OAEM) routinely consider whether identified underutilized land and buildings may be potential candidates for re-development via the EUL Program. VA Directive and Handbook 7633, "Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal," require that prior to any proposed disposal, the EUL Program be consulted and provides guidance for doing so. Once a facility identifies underutilized land or building as a potential EUL candidate and wishes to proceed, the following steps must be followed.
 - (1) **Preliminary Project Review.** The facility contacts OAEM for preliminary review of the underutilized asset to determine if an EUL is potentially feasible. The preliminary review may include the following: site and location review to assess existing conditions; review of VA facility needs and Veteran homeless population to assess demand; review of other relevant market characteristics; and an understanding of the level of support for the project among community stakeholders, among other factors.
 - (2) **Department EUL Project List.** After potential feasibility is determined through the preliminary review and the Designated VA Representative (DVR) and Assistant Secretary for Management (AS/M) provide approvals, OAEM adds the proposed project to the Department EUL Project List. No

activity may take place until this approval is received. OAEM maintains the Department EUL Project List, reviews it on an ongoing basis and evaluates each project for continued feasibility.

- (3) **Concept Paper.** The responsible facility/office, in partnership with OAEM, develops a concept paper application and uploads to the Strategic Capital Investment Plan (SCIP) Automated Tool (SAT). Concept papers are subject to review by the affected VA organizations and require AS/M approval.
- (4) **Public Hearing.** OAEM conducts a public hearing on the EUL concept for the local community and other interested parties after AS/M approval of the concept paper. Public hearings are recorded by video, audio and/or in a written document with questions, concerns and opinions raised by participants. Following the public hearing, OAEM and the administration or staff office responsible for the project determine whether VA should proceed with the project.
- (5) **Offeror Solicitation and Selection.** VA EUL solicitations are subject to the “Rule of Two” process prescribed in 38 U.S.C. § 8127(d). Neither VA’s EUL authority, nor solicitations issued pursuant to this authority, are bound by the Federal Acquisition Regulation (FAR) or by the VA Acquisition Regulation (VAAR). These regulations, however, should be used as guidelines for the content, format and evaluation of EUL solicitations. Authority for selecting a preferred developer/lessee resides with the DVR and is carried out in accordance with VA’s EUL authority. However, in accordance with 38 U.S.C. § 8162(b)1, if the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall, at their discretion, select the party using such selection procedures as the Secretary considers appropriate.
- (6) **Environmental and Historic Preservation Compliance.** EUL projects are subject to all applicable Federal, state and local environmental laws, codes, ordinances and regulations, including but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901, et seq.; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347; and the National Historic Preservation Act (NHPA), as amended, 54 U.S.C. §§ 300101 et seq.
 - (a) Complying with environmental laws requires VA to conduct environmental testing (via an environmental site assessment) to understand the current conditions of a site. If the Phase I or II environmental site assessment demonstrates a need for any environmental remediation or abatement, VA or the developer (on

behalf of VA) will need to conduct appropriate Phase III environmental remediation.

- (b) Evidence showing compliance and proposed compliance with Section 106 of the NHPA is required before the EUL can be executed. Further, VA remains responsible for NHPA Section 106 compliance for the entire term of the project.
- (7) **Real Estate Valuation.** OAEM conducts an appraisal to assist VA in determining a fair value for the property to be leased. In return for allowing VA capital assets to be developed by an EUL, per 38 U.S.C. §8162(b)(3), VA may receive consideration at fair value (or no consideration) as determined by the Secretary. Fair value as determined by the Secretary may be less than or equal to an appraiser's opinion of the real property's market rent value. The Secretary may evaluate alternative uses (or lack thereof) for the property and the Veterans who will be served by the EUL, affecting the Secretary's determination.
- (8) **EUL Documents and EUL Signing.** Each EUL project requires the development and signing of a lease document accompanied by relevant exhibits. Authority to execute the lease resides with the AS/M. The AS/M and lessee representative sign the EUL after reaching agreement on all terms, following Congressional notification and Office of Management and Budget review, as referenced in this directive. The EUL or memorandum of lease is recorded by the lessee in the municipality local to the EUL site.
- (9) **Congressional Notification.** Pursuant to 38 U.S.C. § 8163, prior to EUL execution, the Secretary provides a Notice of Intent to Enter (NOIE) to the following Senate and House Congressional committees: Veterans Affairs, Budget and Appropriations. An EUL may only be executed 45 calendar days after the NOIE is signed by the Secretary, transmitted to Congress and published in the Federal Register. The NOIE must adhere to the requirements in the EUL statute.
- (10) **Office of Management and Budget (OMB) Review.** Pursuant to the provisions of 38 U.S.C. §§ 8162 and the MISSION Act of 2018, OMB is to review an EUL prior to signing to ensure the EUL does not provide for any acquisition, contract, demonstration, exchange, grant, incentive, procurement, sale, other transaction authority, service agreement, use agreement, lease, or lease-back by the Secretary or Federal government.

c. **Execution.**

- (1) **Pre-Construction.** The following activities are performed prior to start of EUL project construction.

- (a) The Veterans Integrated Service Network (VISN) Capital Asset Manager (CAM) or Veterans Benefits Administration/National Cemetery Administration (VBA/NCA) representative, in conjunction with the local VA facility, designates a construction local site monitor (LSM) and a back-up/alternate LSM to perform certain record-keeping and other duties during pre-construction and construction. The DVR appoints the initial LSM and the back-up/alternate via memo to the local VA facility. Following the initial appointment by the DVR, any subsequent LSM appointments shall be determined by the VISN CAM or VBA/NCA representative, in conjunction with the VA facility and appointee and notice of the change provided to OAEM.
 - (b) OAEM is responsible for coordinating all pre-construction activities with the lessee and the local VA facility. OAEM conducts or verifies periodic oversight inspections; processes lessee submittals; ensures timely responses by all parties; and coordinates any VA design/development review.
 - (2) **Construction.** The construction LSM monitors the lessee's fulfillment of its construction responsibilities per the terms of the lease. The local VA facility is responsible for supporting the construction LSM. OAEM is responsible for communicating with the LSM as needed regarding any construction issues and collecting copies of all critical construction documentation (e.g., project reports, Certificate of Occupancy, etc.).
 - (3) **Use of VA Funds.** Title 38 U.S.C. §8162(b)(4) authorizes the Department to use minor construction funds as a capital contribution to an EUL. All VA contributions of funds must first comply with all existing Departmental controls and approvals for the use of such funds. Capital contributions are documented in a commitment agreement that includes the scope of work. The use of minor construction funds will be coordinated with the involved Administration or staff.
 - (4) **Oversight and Compliance.** See Appendix A for details on oversight and compliance activities and responsibilities during EUL execution.
- d. **Steady State (Post-Transaction/Operational).** An EUL moves from the execution phase to the steady state phase following the completion, acceptance and commencement or activation of any development or improvements specified in the EUL. The local VA facility, VISN or VBA/NCA region, lessee and OAEM carry out the activities listed below during the steady state phase of the EUL project.
- (1) The lessee meets all requirements specified in the EUL.
 - (2) The VISN CAM or VBA/NCA representative, in conjunction with the local VA facility, designates a post-transaction LSM and a back-up/alternate

post-transaction LSM for each project, to perform certain record-keeping, reporting and other duties once construction is completed. The DVR appoints the initial LSM and the back-up/alternate via memo to the local VA facility. Following the initial appointment by the DVR, subsequent LSM appointments shall be determined by the VISN CAM or VBA/NCA representative, in conjunction with the VA facility and appointee and OAEM provided notice of the change. Post-transaction LSMs have the primary responsibility for obtaining documentation the lessee is required to provide per the EUL and providing documentation and project-specific information to OAEM. The VISN CAM or VBA/NCA representative reviews the activities of the LSM in accordance with OAEM guidance.

- (3) OAEM monitors operational EULs based on lease requirements and all relevant Federal laws, as well as Departmental missions and goals. OAEM oversight monitors (OMs) use various systems and databases for tracking, recording and maintaining documentation on each operational EUL project in a consistent, systematic manner; for conducting EUL compliance monitoring activities; and for providing related internal and external reporting.
 - (4) See Appendix A for details on oversight, monitoring and compliance activities and responsibilities during the steady state phase of EULs.
- e. **Default Process (if applicable).** The OAEM project manager (PM) during the execution phase, or the LSM during the steady state phase, is responsible for identifying when a lessee or VA is at risk of default because of actions or omissions resulting in non-compliance with the terms and conditions of the lease.
- (1) **Execution Phase.** If the OAEM PM expects or has confirmed an event of default by the lessee or by VA, the PM immediately notifies the VISN CAM or VBA/NCA representative. OAEM is responsible for overseeing and facilitating efforts to remedy the default, with direction from the DVR and in consultation with the VISN CAM or VBA/NCA representative and local facility staff. At all times, the DVR has final authority on any remedy actions. If no remedy is possible, the DVR may proceed with termination of the lease.
 - (2) **Steady State Phase.** If the LSM anticipates or has confirmed an event of default by the lessee or by VA, the LSM shall immediately notify the VISN CAM or VBA/NCA representative and the OAEM OM. OAEM is responsible for overseeing and facilitating efforts to remedy the default, with direction from the DVR and in consultation with the VISN CAM or VBA/NCA representative and local facility staff. At all times, the DVR has final authority on any remedy actions. If no remedy is possible, the DVR may proceed with termination of the lease.

(3) **Default and Termination Process.** See Appendix B for details of the default and termination processes.

- f. **Disposal (if applicable).** Under 38 U.S.C. § 8164, the Secretary has the authority to pursue a disposal action to the lessee during the term of the EUL or within 30 days thereafter, if the Secretary determines that the leased property is no longer needed by the Department. Only the Secretary can exercise this disposal authority and this authority may not be delegated (see Appendix A).

3. RESPONSIBILITIES.

- a. **Assistant Secretary for Management (AS/M) and Chief Financial Officer** shall: oversee implementation of the EUL program and serves as authorized signatory for EULs per Secretary delegation. Modifications and amendments to an existing EUL that result in a change to the project or fall outside of the scope of the previously approved concept paper or the lease agreement and exhibits must be authorized by the AS/M. The AS/M appoints a designated VA representative to provide the necessary day to day administration, monitoring and management of EULs.
- b. **Veterans Health Administration (VHA) Deputy Undersecretary for Health** shall: provide executive oversight of and the necessary resources for VHA EUL projects. This includes assigning designated personnel and coordinating with the respective Veterans Integrated Service Network (VISN) personnel.
- c. **Veterans Benefits Administration (VBA) Deputy Undersecretary for Field Operations** shall: provide executive oversight of and the necessary resources for VBA EUL projects, including assigning designated personnel.
- d. **National Cemetery Administration (NCA) Deputy Undersecretary for Field Programs and Cemetery Operations** shall: provide executive oversight of and the necessary resources for NCA EUL projects, including assigning designated personnel.
- e. **Designated VA Representative (DVR)** shall: serve as the administrative officer for EULs and as signatory authority for documents pertaining to a previously executed EUL (including any service/use agreements) that do not result in any change to the project or fall outside of the approved concept paper scope and lease agreement and exhibits. This role is not further delegable. The DVR approves capital contribution payments, disbursements and reimbursements and issues written correspondence needed to administer EUL projects.
- f. **Office of Asset Enterprise Management (OAEM) EUL Program Service Director** shall: provide leadership and guidance associated with implementing the EUL program, including but not limited to: 1) establishing policies, procedures and guidelines for implementing the program within the Department; 2) devising appropriate business structures; 3) assessing project feasibility; 4)

conducting VA due diligence; 5) developing and/or reviewing EUL documents in coordination with Office of General Counsel; 6) assigning a portfolio/project manager and oversight monitor for each EUL project; 7) coordinating with appropriate Departmental offices and activities and with other Federal and non-Federal entities; 8) assuring proper project documentation; and 9) providing required Department-level EUL program reporting.

- g. **OAEM EUL Portfolio/Project Manager (PM)** shall: provide day-to-day support and coordination among all parties during the project formulation and execution phases, including any default event remedy process. The PM coordinates among parties to help ensure the provision of all required compliance monitoring data, reports and project documents in accordance with established timeframes.
- h. **OAEM EUL Oversight Monitor (OM)** shall: provide day-to-day support and coordination among all parties during the steady state phase. The OM develops and implements oversight management tools to ensure appropriate coordination, tracking and reporting on EUL project performance post-construction to ensure that requirements of the EUL are being met. The OM is responsible for overseeing compliance performance and the compliance issue resolution process and for coordinating any post-construction default event remedy process.
- i. **Office of Construction and Facilities Management (OCFM), Office of Facilities Planning, Associate Executive Director** shall: furnish subject-matter expertise in support of EUL projects, including but not limited to environmental and historic preservation compliance, facilities management and master planning, facility assessments and construction standards.
- j. **OCFM Office of Real Property (ORP), Associate Executive Director** shall: furnish subject-matter expertise in support of EUL projects, including but not limited to land management and real property issues beyond the underlying EUL project itself (e.g., issues with easements, rights of way). The Associate Executive Director has authority to execute easement agreements, license agreements and concurrent jurisdiction actions necessary to allow EUL projects to proceed timely.
- k. **Office of General Counsel (OGC) Real Property Chief Counsel** shall: provide legal guidance and opinions on matters related to the EUL statute; assists in the preparation of documentation supporting EUL projects; and reviews and edits EUL documents, including the lease, exhibits to the lease and any amendments. Exhibits may include but not be limited to legal description, site plan, design plan, development plan, operations and maintenance plan, tenant selection plan, memorandum of lease, capital contribution commitment agreement and others as applicable.
- l. **Office of Financial Audit (OFA) Director** shall: oversee accounting and financial operations associated with executed EULs that feature independent

owner trust structures. For these EUL projects, the OFA is responsible for the financial oversight of EUL funds held in the owner trusts. OFA reviews and oversees trust accounts for compliance with accounting/auditing standards and VA financial regulations and performs periodic financial reporting duties.

- m. **NCA Project Representatives** shall: provide a level of oversight with respect to NCA EUL projects; designating LSMs (using guidance on required skillsets received from OAEM PM and/or OAEM OM) to be initially appointed by the DVR; liaising with OAEM and the local NCA facility when issues arise with EUL projects; assisting with particularly complex EUL projects; and reviewing the activities of the LSM in accordance with OAEM guidance.
- n. **VBA Project Representatives** shall: provide a level of oversight with respect to VBA EUL projects; designating LSMs (using guidance on required skillsets received from OAEM PM and/or OAEM OM) to be initially appointed by the DVR; liaising with OAEM and the local VBA facility when issues arise with EUL projects; assisting with particularly complex EUL projects; and reviewing the activities of the LSM in accordance with OAEM guidance.
- o. **VISN Capital Asset Manager (CAM)** shall: provide a level of oversight with respect to VHA EUL projects in the VISN; designating LSMs (in consultation with the facility and using guidance on required skillsets from OAEM PM and/or OAEM OM); liaising with OAEM and the local VHA facility when issues arise with EUL projects; assisting with particularly complex EUL projects; and reviewing the activities of the LSM in accordance with OAEM guidance.
- p. **Local Facility Director** shall: assign support staff as requested by the OAEM PM, OAEM OM or the LSM. The Local Facility Director shall receive from the OAEM PM and/or OM guidance on the necessary skillsets of requested support staff.
- q. **Local Site Monitor (LSM)** (both construction LSM and post-transaction LSM) shall: provide the necessary day-to-day administration, monitoring and oversight of the EUL project; providing monitoring data, reports and project documents; and notifying the VISN CAM or the VBA/NCA representative and the OAEM PM or OM of any issues that arise with the assigned EUL project. LSMs coordinate closely with the OAEM PM or OM and perform duties in accordance with OAEM-established timelines, communication protocols and other guidance.
- r. **Local Fiscal Officer (LFO)** shall: ensure the complete and accurate processing of all financial transactions related to each EUL project in VA's financial management system. The LFO compiles financial results for each EUL at the facility level and provide information on that EUL to designated representatives for financial reporting purposes.
- s. **Local Facility Support Staff** shall: provide necessary technical experts to support the OAEM PM and the LSM.

- 4. REFERENCES.** A description of the EUL Program, with links to information resources including the EUL statute, is located here: [Enhanced-Use Lease](#). Key laws and other relevant information sources are listed below. Federal laws and regulations are available through web-based resources such as Govinfo, a service of the United States Government Publishing Office (<https://www.govinfo.gov>) and the electronic Code of Federal Regulation (<https://www.ecfr.gov>). Relevant directives and handbooks can be found on the VA publication website (<https://www.va.gov/vapubs>).
- a. 38 U.S.C. §§ 8161-8169, Enhanced-Use Leases of Real Property, <https://www.govinfo.gov/content/pkg/USCODE-2008-title38/pdf/USCODE-2008-title38-partVI-chap81-subchapV.pdf>
 - b. Delegation of EUL authority; assignment of functions and duties (38 U.S.C. § 512(a)), <https://www.govinfo.gov/content/pkg/USCODE-2011-title38/html/USCODE-2011-title38-partI-chap5-subchapI-sec512.htm>
 - c. Honoring Our PACT Act of 2022, Public Law No. 117-168, <https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf>
 - d. West Los Angeles Leasing Act of 2016, Public Law No. 114-226, <https://www.congress.gov/114/plaws/publ226/PLAW-114publ226.pdf>
 - e. West Los Angeles VA Campus Improvement Act of 2021, Public Law No. 117-18 (06/23/2021), <https://www.congress.gov/bill/117th-congress/house-bill/711>
 - f. National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470, <https://www.govinfo.gov/content/pkg/USCODE-2013-title16/html/USCODE-2013-title16-chap1A-subchapII.htm>
 - g. Advisory Council on Historic Preservation, Notice of Issuance of the U.S. Department of Veterans Affairs Program Comment for Vacant and Underutilized Properties: <https://www.federalregister.gov/documents/2018/10/26/2018-23397/notice-of-issuance-of-the-us-department-of-veterans-affairs-program-comment-for-vacant-and>
 - h. National Environmental Policy Act (NEPA) (42 U.S.C. § 4321, et seq.). <https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap55.htm>
 - i. VA NEPA Implementing Regulation (38 CFR Part 26). <https://www.ecfr.gov/current/title-38/chapter-I/part-26>
 - j. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. § 9601 et seq.). <https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap103.htm>

- k. Resource Conservation and Recovery Act of 1976, Public Law No. 94-580, <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg2795.pdf>
- l. Federal Financial Management Improvement Act of 1996, Public Law No. 104-208, <https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>
- m. Office of Management and Budget Circular A-11, Appendix B. <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>
- n. VA Directive 7545, "Cultural Resource Management Policy and VA Handbook 7545, "Cultural Resource Management Procedures" <https://www.va.gov/vapubs>
- o. VA Directive and Handbook 7633, Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal <https://www.va.gov/vapubs>
- p. VA Directive 7815, Acquisition of Real Property By Lease and By Assignment From General Services Administration <https://www.va.gov/vapubs>
- q. VHA Directive 1002.02, VHA Minor Construction Program, Provides Program Standards and Policy <https://www.va.gov/vhapublications/>

APPENDIX A — EUL OVERSIGHT AND COMPLIANCE

1. **OVERSIGHT AND COMPLIANCE OVERVIEW.** Compliance with the terms of an EUL is essential. Appropriate VA representative(s) have oversight responsibility to ensure that established metrics are met and that accurate information is provided and utilized in internal and external reports.
2. **EXECUTION OVERSIGHT.**
 - a. **Kickoff Meeting.** The construction monitoring phase begins with a kickoff meeting. The PM is responsible for establishing a kickoff meeting with the lessee, the construction LSM and other key parties that either the lessee or VA designates.
 - b. **Construction Oversight.** The construction LSM has the primary responsibility for local facility monitoring of the lessee's oversight responsibilities. The LSM attends lessee inspection meetings, reviews lessee and compliance entity reports, directs periodic site monitoring, stores key construction-related documents, raises construction and compliance issues with the lessee, informs the OAEM PM of such issues and forwards data and reports to the PM. The LSM is responsible for storing copies of all required EUL project documents at the local facility and forwarding any original physical copies to OAEM upon request.
 - c. **Periodic Inspections.** The construction LSM ensures performance of periodic inspections to confirm that construction standards are generally being met and that the project is proceeding in accordance with the terms and conditions outlined in the EUL.
 - d. **Document Management.** The PM collects and maintains required supporting documents and reports in a construction project folder and in accordance with the OAEM records management system and EULIS.
 - e. **Capital Contribution Reporting.** If an EUL project requires payment of a VA capital contribution, the LSM is responsible for monitoring the amount(s) VA pays to the lessee and for requesting any required DVR approvals. Only the DVR may approve VA capital contributions to be paid to the lessee.
 - f. **End of Construction Report (ECR).** The ECR is a one-time report prepared by the PM and collected at the end of the execution (construction) phase for each EUL. The ECR includes all required construction documents and oversight information for the LSM. Once the approved ECR has been loaded to EULIS, the PM ensures that all necessary data systems, including the Capital Asset Inventory (CAI) and the Strategic Capital Investment Planning (SCIP) tool, are updated with information from the approved ECR.

3. STEADY STATE/POST-TRANSACTION OVERSIGHT.

- a. **Financial Reporting.** The LSM, in coordination with the local fiscal officer (LFO), is responsible for tracking financial payments monthly (or less frequently as specified in the EUL). The LSM is responsible for transmitting invoices (e.g., for ancillary reimbursements, rent payments) and for ensuring that all financial payments are appropriately authorized and remittance, disbursements and receipts are accurately recorded in the appropriate VA financial management system. The LSM enters financial payment data for the project in EULIS and ensures that data entered in EULIS matches the information recorded in the financial management system.
- b. **Consideration Reporting.** The LSM is responsible for tracking any required consideration as well as any VA expenses monthly (or less frequently as specified in the Annual Oversight Compliance Certificate (AOCC) process using the system developed during the formulation phase. The LSM is responsible for entering required consideration data for the project in EULIS.
- c. **Reserve Account Reporting.** Some EULs include a requirement for the EUL lessee to establish and maintain a funded maintenance account (FMA) or other similar reserve account during the term of the EUL. If the project requires a reserve account, the LSM is responsible for monitoring the lessee's reserve account bank statements to ensure that the reserve account is funded appropriately (per the terms of the EUL).
- d. **Document Management.** The LSM, as the local facility point of contact, is responsible for collecting and storing all project documents that are acquired on an ongoing basis, as specified in the lease or according to policy, such as invoices, reserve account statements, tax documentation and insurance certificates. The LSM is responsible for uploading required copies of these documents to EULIS as supporting documentation for the AOCC.
- e. **Renewing Service Agreements.** EULs may contain service agreements in cases in which VA is a tenant of the EUL property. Service agreements normally have two-year terms, with potential subsequent new terms (as opposed to options to extend the initial term of the service agreement). The LSM in consultation with the OM, is responsible for notifying the lessee of VA's plans for entering into a new service agreement or its intention to vacate the premises during the new service agreement term. Additionally, the LSM in consultation with the OM, is responsible for sending the lessee a proposed new service agreement by the dates specified in the initial service agreement. Once the proposed service agreement has been finalized, the OM will send to DVR for approval.
- f. **Lease Enforcement and Dispute Resolution.** The LSM, the VISN CAM or VBA/NCA representative and the OM have no authority to modify, amend or waive EUL terms and conditions. The LSM is responsible for immediately

alerting the appropriate VA parties when the lessee is not performing in accordance with the EUL or if the LSM becomes aware of a dispute/claim filed or to be filed on behalf of the lessee. As noted above, all communications related to EUL issues should follow appropriate VHA, VBA, or NCA communication protocols as applicable, with a courtesy copy to all parties including but not limited to the local facility director, the VISN CAM or VBA/NCA representative, the OM and any other relevant parties (e.g., VISN director, VHA CO, the director(s) of administration, emergency preparedness and facilities offices).

- (1) **Recommendations.** The LSM, the VISN CAM or VBA/NCA representative and the OM prepare recommendations for resolution. The OM aggregates recommendations and briefs the DVR on portfolio issues.
- (2) **Disputes and Claims.** If requested by the OM, the LSM compiles and provides all necessary documentation related to the dispute/claim and submits it to OAEM for review as it assesses and determines settlement options. OGC assists, as necessary.
- (3) **Tracking Issues to Resolution** During the steady state, the OM is responsible for overseeing and facilitating the issues resolution process with direction from the DVR. The LSM leads and manages the compliance issue resolution process and assigns tasks to all appropriate parties. The LSM, in consultation with the VISN CAM or VBA/NCA representative or any local support staff, is responsible for maintaining EUL issues log and providing timely updates upon OM request.

4. DISPOSAL.

- a. At the end of the EUL lease term, or sooner if terminated, the land and any improvements automatically revert to VA and the VAMC. Under Title 38 U.S.C. §8164, if the Secretary determines during the term of an EUL or within 30 days of its expiration, that the leased property is no longer needed by the Department, he may initiate action to transfer to the lessee all rights, title and United States' interest in the property. Before doing so, however, the Secretary must also determine that a disposal under this section, rather than under Title 38 U.S.C. §§8118 or 8122, is in the Department's best interest. Furthermore, the Secretary must provide notice (a "Notice of Intent to Dispose") to the congressional Veterans' Affairs Committees not less than 45 days before a disposition is made and publish the notice in the Federal Register. Disposal authority may not be delegated. In addition, funds received by the Department from a disposal of leased property under Title 38 U.S.C. §8164 will be deposited, as determined by the Secretary, in either designated major or minor construction accounts or the VA Capital Asset Fund established under Title 38 U.S.C. §8118. Refer to the OAEM Web site at <https://vaww.va.gov/oaem/> for further information.

- b. Should VA determine that it has no further use for the land and improvements and disposal of the property is the preferred option, CFM is the executing office for property disposal. OAEM should provide CFM with all facility information that it has gathered in the EUL process for CFM's use in the disposal process.
- c. The West Los Angeles Leasing Act of 2016 in conjunction with Section 224 of Public Law 110-161, specifically prohibits VA from selling or otherwise conveying to a third party, fee simple title to any real property or improvements at the West Los Angeles Campus.

5. ANNUAL REVIEWS AND REPORTS.

- a. **Project Document Review.** The LSM and the VISN CAM or VBA/NCA representative conduct an annual review to ensure that all required project documents have been uploaded to EULIS (e.g., invoices, taxes, insurance certificates). On a portfolio basis, the OM performs an annual review to ensure that the LSMs, the VISN CAMs and the VBA/NCA representatives have completed their oversight activities and that project documentation has been properly uploaded to EULIS.
- b. **Review of Consideration.** The EUL Consideration Report, published in VA's annual budget submission, describes VA's stewardship of its underutilized real property assets via its EUL authority and details the motivation and terms of each lease. On a project basis, the LSM and the VISN CAM or VBA/NCA representative are responsible for conducting an annual review to ensure that all consideration are accurately recorded in EULIS and that all required supporting documents have been uploaded. On a portfolio basis, the OM performs an annual review to ensure that the LSMs, the VISN CAMs and the VBA/NCA representatives have completed their oversight activities and that all consideration has been received in full and is properly recorded in EULIS. OAEM compiles the information collected into the annual Consideration Report. The report shall consistently show the enhanced services benefits from EULs separately from the financial benefits that directly affect VA's budget. It shall also include an explanation regarding estimated EUL enhanced services that estimates may not adequately capture all benefits of the EUL project and that certain costs associated with providing such benefits that are incurred by parties outside VA are not included in the analysis.
- c. **Review of Financial Payments.** The LSM, in coordination with the LFO, is responsible for conducting an annual review to ensure that all payments and revenues received are appropriately authorized and that remittance, disbursements and receipts are accurately recorded in the appropriate VA financial management system and in EULIS. The VISN CAM or VBA/NCA representative will perform an annual review to ensure that all payments and revenues received have been tracked correctly by the LSM and notify the VA Office of Finance if errors are identified. On a portfolio basis, the OM performs an annual review to ensure that the LSMs, the VISN CAM and the VBA/NCA

representatives have completed their oversight activities and to ensure that financial payments are current and properly recorded in the financial management system and EULIS.

- d. Annual Compliance Review.** On an annual basis and throughout the year, the LSM reviews the project to identify any major issues. When the EUL requires an annual third-party site assessment, the LSM verifies that an assessment was completed, collects any necessary supporting documents and uploads the assessment to EULIS. Additionally, the LSM may solicit feedback from the lessee or the VISN CAM or VBA/NCA representative. The OM reviews each project to determine compliance status and establish action items. This annual compliance review is split between two processes: The Annual Oversight Compliance Certification (AOCC) and the Outcome Tracking Sheet (OTS).
- (1) AOCC.** The AOCC is an annual certificate collected at the close of each fiscal year during the steady state phase of the EUL. The AOCC lists all requirements for each operational EUL and all required supporting documentation. AOCC training for LSMs is mandatory and offered at least twice annually. At the close of the fiscal year, the OM notifies the LSM and the VISN CAM or VBA/NCA representative that the AOCC is coming due and the LSM completes and uploads the AOCC (with all supporting documentation) to EULIS within a designated time period following the close of the fiscal year. The VISN CAM or VBA/NCA and OM reviews the AOCC within a designated time period to ensure sufficient time to prepare any required annual reports.
- (2) OTS.** The PM and the LSM have responsibility for monitoring the performance and timely provision of agreed-upon EUL consideration and expenses to VA as stipulated in the EUL. Depending on project type, market demand and the VA assets involved, the amount and type of consideration will vary from lease to lease.
- e. Annual Financial Statement Review.** On an annual basis, the LSM identifies and monitors the financial health of the project. The LSM reviews the annual financial statements, assigns a rating and updates EULIS, ensuring that all required financial supporting documents have been uploaded to EULIS. The VISN CAM or VBA/NCA representative reviews the LSM's financial rating and ensures that all required financial supporting documents have been uploaded to EULIS. The OM reviews and rates the financial health of projects in the EUL portfolio using the information entered by the LSM and reviewed by the VISN CAM or VBA/NCA representative. The OM identifies any major issues and produces portfolio reports as required.
- f. Lessons Learned.** On an annual basis, the LSM, the VISN CAM or VBA/NCA representative and the OM review each project to document lessons learned. Lessons learned are updated and uploaded in EULIS.

APPENDIX B — DEFAULT AND TERMINATION PROCESS

1. NOTICE OF DEFAULT OR NOTICE OF TERMINATION.

- a. Upon the occurrence of an event of default by either the lessee or by VA, the PM or LSM coordinates with the OM, the DVR and OGC to prepare a written notice of default or written notice of termination, as applicable, which is presented to the lessee, lessee's counsel if the EUL requires it and any applicable leasehold mortgagees. Once the notice has been approved and as directed by the DVR, the OM is responsible for providing the notice to all appropriate parties, updating the project's status in EULIS and uploading the notice to EULIS.
- b. **Projects Held in Trust.** Trust projects require additional notifications when an EUL project enters default. With the assistance of the PM, the LSM and the VISN CAM or VBA/NCA representative, the OM is responsible for drafting trustee letters and liaising with the Office of Financial Audit as necessary. Additionally, the OM may be required to advise the Office of Finance on bondholder issues.

2. CURE PERIOD.

- a. Upon an EUL party's issuance of a written notice of default to the other EUL party, VA monitors the underlying cure period in which the defaulting party must remedy (i.e., cure) the underlying EUL breach. The allowable cure periods are specified in the terms of the respective EUL. VA monitors the actions of each party to determine if the defaulting party is taking appropriate steps to remedy the default within the applicable cure period.
- b. **Execution Phase.** The PM coordinates with the VISN CAM or VBA/NCA representative as applicable, the OM and the DVR to determine appropriate next steps. The PM with the assistance of the VISN CAM or VBA/NCA representative works with the lessee to remedy any defaults in accordance with cure period requirements specified in the EUL.
- c. **Steady State/Post-Transaction Phase.** The LSM coordinates with the VISN CAM or VBA/NCA representative, the OM and the DVR to determine appropriate next steps. The LSM, with the assistance of the VISN CAM or VBA/NCA representative, works with the lessee, to remedy any default in accordance with cure period requirements specified in the EUL.

3. EARLY TERMINATION/ REPLACEMENT.

- a. If the PM, the LSM, the VISN CAM or VBA/NCA representative, the OM and the DVR are unsuccessful in resolving the default conditions, the DVR takes the proper steps needed to terminate the EUL, with approval by the AS/M. The DVR may request assistance from the OM and the PM, who may, in turn, request assistance from the LSM and VISN CAM or VBA/NCA representative, as

necessary. OAEM requests legal assistance from OGC for EUL termination matters.

- b. Recoveries.** The OM (with assistance from the PM, LSM, the VISN CAM or VBA/NCA representative and the Office of Finance as necessary) coordinates with the DVR and all applicable VA staff offices regarding the tracking and reporting of all reasonable expenses, including reasonable attorneys' fees and costs incurred due to termination of an EUL and, if applicable, costs related to the preparation, execution and delivery of a replacement or amended lease. Additionally, the OM (with assistance from the LSM, the PM and the VISN CAM or VBA/NCA representative) coordinates with the DVR regarding the monitoring of recoveries related to damages associated with the default based on Federal, state, or local law.
- c. Amendments.** If multiple parcels are contained in an EUL, but not all parcels are affected by the event of default/termination, the PM or LSM (with assistance from the VISN CAM or VBA/NCA representative and any local support staff) coordinates with the OM, who works with the DVR and OGC to prepare, as applicable and if deemed appropriate from a business and legal perspective, an amendment to the existing lease or a replacement EUL excluding the affected parcel.
- d. Notifications.** The OM is responsible for overseeing and facilitating the notification process as directed by the DVR. Timely notification of any changes to an EUL must be provided to stakeholders, trustees and all other applicable parties by the PM during the execution phase or by the LSM during the steady state.
- e. Approvals.** The AS/M is responsible for approving any termination, replacement, or amendment to an existing EUL. The LSMs, the PMs, the VISN CAMs, the VBA/NCA representatives and the OM does not have the authority to execute any amendments/ modifications to the EUL, to execute any amendments/ modifications to any EUL exhibits, or to extend or terminate the EULs. All such inquiries are to be directed to the DVR.