

## MANAGING UNDERUTILIZED REAL PROPERTY ASSETS, INCLUDING OPTIONS FOR REUSE AND DISPOSAL

**1. REASON FOR ISSUE:** This handbook describes methods and requirements for managing underutilized real property in VA's asset portfolio.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook provides background, policy, procedures, responsibilities and reporting requirements for the execution of actions that will improve management of VA's real property and maximize existing resources.

a. Updates to the reporting requirements were made to incorporate strategic planning, disposal planning, and requiring continuous updates to real property inventory data.

b. Additional reuse and disposal options were added, including historic outlease, state extended care, exchanges, disposal through the General Services Administration, and unique disposal scenarios. With the additional options included, the prioritization of reuse and disposal options was also updated in the handbook; and

c. Several definitions were updated and new terms added, as well as updating current responsibilities for key VA organizations.

**3. RESPONSIBLE OFFICE:** The Office of Management, Office of Asset Enterprise Management (OAEM) (044).

**4. RELATED DIRECTIVE:** VA Directive 7633.

**5. RESCISSIONS:** VA Handbook 7633, Managing Underutilized Real Property, Including Disposal dated April 18, 2006.

**CERTIFIED BY:**

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**MANAGING UNDERUTILIZED REAL PROPERTY ASSETS, INCLUDING OPTIONS  
FOR REUSE AND DISPOSAL**

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## MANAGING UNDERUTILIZED REAL PROPERTY ASSETS, INCLUDING OPTIONS FOR REUSE AND DISPOSAL

**1. PURPOSE AND SCOPE.** This handbook articulates VA policy for managing underutilized real property assets in VA's portfolio, including VA priorities related to reuse and disposal. The provisions of the corresponding Directive apply VA-wide. Each Administration and staff office shall ensure that all subordinate organizations are aware of and comply with this handbook.

### 2. PROCEDURES

#### a. Identification of Underutilized Assets

(1) VA tracks a number of performance criteria for internal and external reporting, including four Federal Real Property Council (FRPC) measures:

- (a) Utilization
- (b) Mission Dependency
- (c) Facility Condition Index
- (d) Operating Costs

(2) Each year, VA creates a list of specific assets, with utilization rates less than 50 percent to determine their candidacy for disposal. All vacant buildings must have a disposal plan or an explanation of why disposal is not feasible.

#### b. Strategic Planning and Reporting

(1) **Continually – Capital Asset Inventory (CAI) Updates.** CAI must be continuously updated to record each actual disposal but not later than the end of the fiscal quarter of execution.

(2) **Annually – Current Year Disposal Plan.** Each year, VISNs must certify a current year disposal plan that includes, at minimum: (a) the building number, (b) gross square feet, (c) disposal method, and (d) planned disposal year. Disposal plans must account for the disposition of all assets no longer used by VA, including assets taken out of the active inventory through mothballing or Enhanced Use Lease (EUL). The subset of disposals in which VA no longer retains title to the asset is then reported externally to FRPC.

(3) **Annually – Strategic Capital Investment Planning (SCIP).** All disposal plans in CAI must be consistent with the SCIP Plan in terms of year of execution, planned modality, and funding approval (if applicable). Projects for disposal must be submitted as part of the long-range SCIP plan. Before the start of the next fiscal year, Operating Plans are due that include a list of all funded projects, including disposal projects. Disposal projects that require funding must be approved through SCIP and included in an approved Operating Plan. Projects that do not require funding, such as EUL or sharing agreements, are still included in SCIP, but approved through the program offices.

(4) **Annually – Reduce the Footprint (RTF) Monitoring.** Each year, VA analyzes its year-end performance to reduce the footprint of office and warehouse buildings by comparison against the Real Property Cost Savings and Innovation Plan. VA makes any necessary adjustments to the Real Property Cost Savings and Innovation Plan, along with a detailed narrative and analysis for why these adjustments are necessary.

### **c. VA Priorities for Reuse and Disposal of Underutilized Assets**

#### **(1) Priority #1: VA Reuse**

(a) **Summary.** VA's first priority, where possible, is to rehabilitate underutilized assets for productive use within VA. VA may invest Non-Recurring Maintenance (NRM) or other project funds to correct facility condition deficiencies and/or convert the asset to a higher and better use. The assets may be transferred to another VA administration that can use them.

(b) **Detail on Intra-agency transfer.** Before VA seeks to divest itself of a real property interest, the property should be offered to other VA entities before seeking external partners for reuse or disposal. The Under Secretary, Assistant Secretary, or other key official of both VA entities must concur on the new use, evidenced by their signature on a Memorandum of Agreement between the two agencies, and the transfer must be approved by the Executive Director, Office of Construction and Facilities Management (CFM). Authority to approve the transfer was delegated through the Under Secretary for Health to the Chief Facilities Management Officer, a position that is now known as the Executive Director of CFM. If an intra-agency transfer is necessary, a request must be submitted to CFM's Office of Real Property (ORP), to effectuate the transfer.

#### **(2) Priority #2: Reuse by Other Stakeholders**

(a) **Summary.** When assets are not suitable for reuse within VA, or reuse is otherwise not possible due to internal funding concerns, the asset is next evaluated for reuse by external stakeholders.

**i. Reuse for Homeless-Related Services.** If the landholding office cannot successfully rehabilitate the asset and no other VA entity has interest in the property, VA next considers the potential for reuse as homeless housing through EUL agreements. EULs and Enhanced Sharing Agreements may be structured to deliver revenue, cost avoidance, cost savings, or other benefits to VA and the community, depending on the partnership situation. All unneeded assets are reported to HUD for McKinney-Vento by ORP. The Office of Asset and Enterprise Management (OAEM) is responsible for executing EUL actions.

**ii. Reuse for Other Purposes.** If an asset is not suitable for reuse for homeless housing via a EUL, it should be analyzed for other types of reuse. The owning Administration, OAEM, and ORP will work in collaboration to analyze whether the asset is suitable for another reuse option, such as agreements to license, outleasing, permitting, or entering into easement agreements for the use of their space. If EUL is not possible, the remaining options within this section are considered equal for the purposes of VA policy.

The specific partnership vehicle or disposal authority chosen will depend on the unique circumstances surrounding each asset and the local real estate market.

**(b) Detail on methods**

**i. EUL.** Currently, VA can convey property to other parties for up to 75 years for supportive housing in exchange for “fair consideration.” Consideration can be in the form of cash only, or the EUL may be entered into with no consideration as determined by the Secretary. Supportive housing is defined in 38 U.S.C. § 8161(3). Such housing projects are designed to maximize benefit to Veterans, and are typically provided to them on a priority basis under the terms of each EULs.

**ii. Outlease.** VHA outleases have a maximum term of three years per 38 U.S.C. § 8122, and NCA outleases have a maximum term of ten years per 38 U.S.C. §2412. The associated requirements are found in the following documents: Sharing - Handbooks 1820.1 and 1660.1; Licenses, Permits and Easements - MP-3, Part II; and IL 00CFM-11-01 – Guidelines for Execution of Outleases, Licenses, and Permits.

**iii. Historic Outlease/Exchange.** VA may lease out its owned properties that are potentially eligible for inclusion on the National Register of Historic Properties under 54 U.S.C. § 300101 et seq. in exchange, in whole or in part, for the tenant’s agreement to preserve the property.

**iv. Easement.** Easements may be granted by VA for permanent or semi-permanent (term of years) use of VA facilities and land. Because an easement agreement is the grant of a significant interest in land, authority to negotiate and execute easement agreements has not been delegated outside of CFM.

**v. Licenses and Permits.** Licenses and permits may be granted by VA for limited use of VA facilities and land for a particular purpose. CFM has delegated limited authority to VISN Directors for VHA license and permit grants but has not delegated authority to any NCA or VBA officials. Requirements are found in the July 15, 2011, Delegation of Authority to Execute Certain Easements, Licenses, and Permits, issued by Real Property Service (now ORP). VHA officials may grant a license for non-Federal use, or a permit for Federal use, of VA owned or controlled space or land for a term of up to 5 years, subject to Regional Counsel concurrence and other conditions. VHA license grants of over 5 years or otherwise exceeding the delegated parameters, and all NCA and VBA licenses, must be submitted to ORP for execution.

**(3) Priority #3: Remove from Inventory**

**(a) Summary.** If VA can no longer use a building, and partners cannot be found to redevelop or otherwise reuse the asset, the next step is to explore deconstruction/ demolition and/or disposition of the property. All disposals by demolition or deconstruction must be approved through the SCIP process. All by demolition or deconstruction of facilities with a fair market value greater than the definition of a major medical facility (as defined in Title 38 United States Code Section 8104(a)(3)) must also be approved by the Secretary. Deconstruction, the process of dismantling a building for reuse or recycling of

parts, should be pursued in advance of demolition. Removing an asset from VA's inventory can be accomplished using either VA authority or leveraging external authorities from the General Services Administration (GSA). The only priority consideration in the methods for removing an asset from the inventory would be VA need for underlying land assets. If VA has a need for the underlying land, but not the improvements constructed on the land, demolition/deconstruction would be a preferable method as other the other potential methods would also remove the underlying land from VA's possession. If there is no need for the underlying land asset, all methods are feasible and would be evaluated for each unique scenario to determine the best option.

**(b) Detail on methods – VA authorities**

**i. Like-Kind Exchange of Property.** The Secretary may acquire any facility or parcel of land he considers necessary for use as a medical facility (38 U.S.C. § Section 8103) or national cemetery (38 U.S.C. § 2405) by exchanging a non-mission dependent or underutilized property under authority in title 38 U.S.C.

**ii. State Extended Care.** The Secretary may transfer any interest in real property determined to be excess to the needs of the Department to a State for use as a nursing home or domiciliary. The requirements for State Extended Care transfers are found under 38 U.S.C. § Section 8122(a)(3). The State must provide assurance that it has the resources to construct and operate such a facility. If the property is used for any other purpose, all rights, title, and interest reverts to the Department. State Extended Care authority usually involves no proceeds; property is granted to the State at 100% discount.

**iii. Capital Asset Fund.** The Secretary is granted authority to transfer real property (under 38 U.S.C. § 8118, 8122) to another department or federal agency, a State, any public or private entity, or an Indian tribe, but the property must first be submitted to the Department of Housing and Urban Development (HUD) for McKinney-Vento screening, which gives priority of use to homeless housing providers (See Appendices A and B) as well as other required steps that must be completed prior to transfer. The Secretary may also enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate transfer of properties listed on the National Register of Historic Places. Fair market consideration is required in exchange for VA property.

**iv. Deconstruction and demolition.** Facilities planning to dispose of a building by demolition, for environmental purposes, should salvage as much of the building materials as possible for green recycling purposes and avoid depositing useful salvageable materials in a landfill. The recommended steps in accomplishing this are:

**a.** The facility should itself (engineering department staff) first dismantle and recycle as much of the salvageable equipment and materials in the building or structure as are needed for its own use. The station should then notify other VA entities on campus and nearby VA stations of the availability of the remaining no-cost salvageable equipment and material. These VA entities will be responsible for any dismantling and hauling away. State homes and local municipalities can also be notified of the availability of remaining salvageable items if time allows within the fiscal year that demolition funds are available.



b. Should there still be significant remaining salvageable materials in the building, the station should then obtain estimates from local “deconstruction salvage contractors” who will recycle the salvageable materials and demolish the building or structure -- either paying for the salvaged materials or giving the facility credit toward the overall demolition costs.

c. Should there be no deconstruction contractors available or interested in the building or structure, a conventional demolition contractor may be used with the requirements that the contractor dismantle the remaining salvageable materials and haul away for recycling purposes before demolishing the rest of the building. In this case, the VA will receive no revenue from the remaining salvageable materials.

d. Facilities should make a concerted effort to ensure that useful salvageable materials are removed for recycling before a VA building is demolished. Some examples of standard salvageable materials include, but are not limited to: heavy timbers and other recyclable lumber, steel beams, electrical equipment and lighting fixtures, electrical cable and copper wiring, bricks and cinder blocks, metal piping and plumbing items, interior doors and frames, heating ducts, metal window frames, aluminum siding, etc.

e. Facilities accomplishing steps a to d above, should enter “deconstruction” as their disposal modality in CAI.

f. Facilities should keep a record of the materials that have been salvaged from each disposal and any revenues received for them, if any.

**(c) Detail on methods – external authorities**

i. **Disposal through GSA.** The Secretary (or designee/delegate) may declare real property excess by notifying GSA and filing the appropriate forms, including the Federal Property Information Checklist (FPIC) (defined in Appendix B) and a Report of Excess Real Property ([SF118](#)), if the Secretary determines the property is no longer needed by the Department in carrying out its functions and is not suitable for the provision of services to homeless Veterans. The requirements (specific to VA) for the transfer to GSA are found under 38 U.S.C. § Section 8122 (permanent authority to procure and dispose of property and to negotiate for common services). An important requirement is that VA must obtain fair market value for any property disposal. Proceeds from GSA disposal are deposited into the United States Treasury Per 40 U.S.C. Subtitle I, Chapter 5, Subchapter IV, Section 571.

**(4) Priority #4: Reduce Costs** – If unneeded assets cannot be reused and necessary funding or approval is not available to remove the asset from inventory, mothballing is a viable option. Mothballing does not remove the asset from inventory, but it safeguards and lowers the operating cost of maintaining the asset, allowing VA to steward the asset safely and consider reuse or demolition of the asset at a later time.

### (5) Unique Disposal Scenarios

(a) **Summary.** There are some unique situations that can arise related to disposal of assets that do not fall within the standard prioritization of underutilized assets and disposal or reuse options. These unique situations can only be used for specific purposes as outlined below.

#### (b) Detail on methods

**i. Compensated Work Therapy.** Compensated Work Therapy (CWT) is a VA vocational rehabilitation program that endeavors to match and support work ready veterans in competitive jobs. According to 38 U.S.C. § 2032, the Secretary of VA, in connection with the conduct of CWT programs, may operate residences and facilities as therapeutic housing. Furthermore, the Secretary may dispose of any property acquired for the purpose of therapeutic housing. The proceeds of any such disposal shall be credited to the General Post Fund. The Secretary may distribute out of the fund such amounts as necessary for the acquisition, management, maintenance, and disposition of real property for the purpose of carrying out such program.

**ii. Legislatively Directed Transfer.** VA may dispose of property through fed-to-fed transfer or to a third party by authority derived from specific legislation. Specific legislation can provide VA with authority to directly transfer title to property to particular recipients. VA has had a number of Public Law directed transfers in the past that directs (i.e. VA “shall transfer” or allows (i.e. VA “may transfer”) specific properties to specific recipients. The statutory authority generally addresses the method of transfer and how costs or revenue would be defined for the specific transfer, such as requiring VA to perform due diligence or providing the transfer to the recipient at no cost to them. If the statutory authority is silent on the required due diligence, VA would be obligated to carry out any necessary work prior to transfer.

## 3. RESPONSIBILITIES

a. **The Secretary.** The Secretary (or designee/delegate) approves all transfers of real property to outside parties.

b. **The Deputy Secretary.** The Deputy Secretary (or designee/delegate) may approve transfers of real property between VA entities.

c. **Under Secretaries, Assistant Secretaries, and Other Key Officials.** Under Secretaries, Assistant Secretaries, and Other Key Officials ensure that the policies set forth in this directive are implemented within their respective organization’s activities, including submission of action plans and disposal plans to the Office of Management via the SCIP process, and any other reporting requirements. Each office originating a disposal project is responsible for submitting individual project applications through SCIP for approval, as well as ensuring CAI is kept up to date with disposal plans.

d. **SCIP Panel.** The SCIP Panel scores all Major, Minor, Leases and Medical Facilities business cases within the SCIP process, including disposal projects. The SCIP

Panel is comprised of nine representatives from across VA. Members include one individual from the following organizations – Office of Management (Co-Chair), Office of Enterprise Integration (Co-Chair), Veterans Health Administration, Veterans Benefits Administration, National Cemetery Administration, Office of Information and Technology, Office of Human Resources and Administration, Office of Security and Preparedness, and Office of Acquisition, Logistics, and Construction. Panel members review the action plans from a VA corporate level perspective, provide support to the SCIP Board, and brief the SCIP Board concerning issues and recommendations.

e. **SCIP Board.** The SCIP Board provides feedback/guidance to the Administrations and staff offices on their SCIP action plans prior to final submission. The SCIP Board is comprised of nine SES-level representatives from across VA. Members include one individual from the following organizations – Office of Management (Co Chair), Office of Policy and Planning (Co-Chair), Veterans Health Administration, Veterans Benefits Administration, National Cemetery Administration, Office of Information and Technology, Office of Human Resources and Administration, Office of Security and Preparedness, and Office of Acquisition, Logistics, and Construction. Board members review the action plans from a VA corporate level perspective, recommend action plan approval through the VA governance process, recommend projects from approved action plans to move forward with business case submissions, and present findings and recommendations on a final list of projects through the VA governance process.

f. **Assistant Secretary for Management.** The Assistant Secretary for Management is VA's Senior Real Property Officer (SRPO) for the purposes of FRPC. The Assistant Secretary for Management sets VA policy to ensure fiscal integrity of VA's portfolio of assets, reviews disposal project applications forwarded by the Administrations or the CIP, and makes recommendations to the Secretary.

g. **Office of Construction and Facility Management (CFM).** CFM is responsible for executing VA real property transfers and disposal actions (non-EUL disposals) for all administrations and staff offices, including making public notices, holding hearings, filing forms with GSA, HUD, or other federal agencies. CFM is also responsible for developing and updating policies and procedures for the execution of transfer and disposal actions, except for EUL actions. In addition, CFM manages VA's official repository of land records for VA's owned real property portfolio.

h. **Office of Asset Enterprise Management (OAEM).** OAEM is responsible for developing and updating Department-wide policy, ensuring Administration disposal requests align with VA policy, and reviewing annual disposal plans submitted by the Administrations and staff offices. OAEM oversees the SCIP process. OAEM is also responsible for handling EUL-related disposals.

#### 4. DEFINITIONS

a. **Capital Asset Fund (CAF)** – A revolving fund established by Public Law 108-422 in the Treasury of the United States for the Department of Veterans Affairs. Any proceeds from transfers are to be deposited into this fund. Amounts in the CAF shall remain available until expended. Any disbursements from CAF must come from an initial

appropriation or re-appropriation by Congress of unobligated CAF funds each fiscal year. The funds may be used for the following purposes under 38 U.S.C. § 8118(b):

(1) Costs associated with transfers of real property including demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

(2) Costs (as listed above) associated with future transfers.

(3) Costs associated with enhancing medical care services through construction projects less than the current major medical facility project threshold (currently \$10 million).

(4) Costs associated with the transfer, lease, or adaptive use of a structure or other property listed on the National Register of Historic Places.

b. **Deconstruction** – The process by which buildings are dismantled through the reuse or recycling of the building hardware. Examples of this include reusing interior doors from an abandoned building or removing good quality door hinges for use elsewhere. The remainder of the building is then left intact for mothballing or demolition.

c. **Disposing of Real Property** – The activity of identifying and repurposing or transferring ownership or control of property owned by VA but no longer needed by VA, which is outlined in this handbook.

d. **Enhanced-Use Leasing (EUL)** – A process that provides innovative opportunities for VA to partner with the public or private sector to maximize returns from underused capital assets. Per 38 U.S.C. 8162, enhanced-use lease properties are not considered to be underutilized and are exempt from McKinney-Vento Act screening. Currently, VA can outlease property to other parties for up to 75 years for “fair consideration.” The consideration can be in the form of cash, services, space, or other in-kind consideration. Note that even after a EUL has been awarded, VA is still ultimately responsible for the real property interests and remains the owner of the real property. Therefore, EUL should be considered a repurposing or reuse of the real property, not a disposition.

e. **Historic Building** – A building listed or eligible to be listed on the National Register of Historic Places by state or federal historic preservation offices.

f. **Historic Outleasing** – Utilizing authority in the National Historic Preservation Act to lease out a Historic Building and appurtenant land to a non-Federal entity. Outleasing under this Act can be conducted for terms of up to 99 years, as may be limited by internal policy.

g. **Interest in Real Property** – Real property owned by the United States and administered by the Secretary.

h. **Intra-Agency Transfer** – A transfer of control of VA-owned real property from one Department office to another. For example, the transfer of control of a parcel of land from VHA to NCA. Responsibility to operate and maintain the real property is also typically

transferred by means of a Memorandum of Agreement executed by the two offices. The transfer is executed and approved by CFM.

i. **Mothballed Building** – Abandoning a building but maintaining a minimal level of heating and cooling. This also includes blocking entryways, avoiding vandalism and ensuring building integrity.

j. **Outlease** – The leasing of VA-owned real property to public or private interests outside of VA. In such a case, VA is the lessor. The maximum term (except in the case of an enhanced-use lease) is 3 years for VHA and VBA (38 U.S.C. § 8122) and 10 years for NCA (38 U.S.C. § 2412).

k. **Permit** – A license granted to another federal agency.

l. **Revocable License** – Permission to enter upon and do a specific act or series of acts upon the land of the licensor without possession or acquiring any estate therein. It legalizes an act, which in the absence of the license would constitute a trespass. A license is personal and non-assignable (unless by agreement), and is revocable at any time.

m. **Sharing of Space** – This process allows VHA space to be offered to a sharing partner for the benefit of Veterans or non-Veterans. Guidance for this program may be found in VHA Handbook 1820.1. If the sharing of space agreement includes detailed language on the use of space, rights, responsibilities, liabilities, and access to the space, a separate revocable license is not needed. In situations where such language is not included in the sharing agreement, a revocable license should be executed in conjunction with the sharing agreement to ensure the real property rights and use is clearly documented.

n. **Underutilized** – An entire property or portion thereof, with or without improvements, used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. By law, property under an enhanced-use lease is not considered underutilized for purposes of the McKinney-Vento Act.

## 5. REFERENCES

- a. Code of Federal Regulations, title 24, volume 31, part 581.
- b. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. § 9601 et seq. <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap103.htm>.
- c. Code of Federal Regulations, title 41, subtitle C, parts 101 and 102, Federal Management Regulations System.
- d. Federal Property and Administrative Services Act (FPASA) of 1949, as amended.

- e. General Services Administration, Office of Property Disposal Resource Center. <http://rc.gsa.gov/>.
- f. Government Accountability Office Report GAO-03-326, Improved Planning for Management of Excess Real Property, January 2003.
- g. House Report 108-663 (H.R. 4768).
- h. National Historical Preservation Act of 1966 (P.L. 89-665), as amended.
- i. National Environmental Policy Act of 1969 (P.L. 91-190), as amended.
- j. Senate Report 108-353 (S.2485).
- k. 38 U.S.C. § 8122, part VI, chapter 81, subchapter II, and subchapter V; sections 8162 and 8164; section 2412.
- l. 40 U.S.C. § 471 and 535
- m. 42 U.S.C. § 11411
- n. 54 U.S.C. § 300101
- o. VA Directive 4085, Capital Asset Management.
- p. VA Directive 4086, Investment Matrix.
- q. VA Office of Asset Enterprise Management <http://www.va.gov/oaem>.
- r. VA Regulations, 38 CFR, part 26.6(c), Environmental Effect of VA Actions.
- s. Veterans Health Programs Improvement Act of 2004 (P.L. 108-422).

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## VA McKinney-Vento Act Process

Managed by CFM

1. Property (land or buildings) is identified as “excess,” “unutilized” or “underutilized” through regularly scheduled surveys.
2. The Federal Property Information Checklist (FPIC) is submitted for each building or parcel of land in response to quarterly requests from HUD (25 days).
3. HUD determines suitability of property for use by homeless assistance groups (30 days).
4. If HUD determines property “unsuitable,” information on the property is published in the Federal Register.
5. Homeless groups may appeal “unsuitable” determination (20 days).
6. If there is no appeal or appeals are denied, the McKinney Act is satisfied and the agency may dispose of the property.
7. If HUD determines the property “suitable,” VA provides HUD with a Statement of Intent to make the property “available” or “unavailable” for homeless use (45 days).
8. If VA declares the property unavailable for use by homeless assistance groups, information on the property is published in the Federal Register and VA may dispose of the property.
9. If VA makes the property available for use by homeless assistance groups, information on the property is published in the Federal Register and a 60-day hold is placed on the property during which no action can be taken.
10. The homeless assistance group submits an expression of interest in the property to Health and Human Services (HHS); a full application must be submitted within 90 days after the expression of interest.
11. If HHS approves application, it is forwarded to the agency for action; the agency has discretion on the length of lease (minimum one year), and other terms and conditions.



## McKinney – Vento Act Process Terms and Definitions

**1. Application requirements for homeless providers applying to HHS under McKinney-Vento Act** – Upon receipt of an expression of interest, HHS will send an application packet to the interested entity requesting the following: (1) description of the applicant organization, (2) description of the property desired, (3) description of the proposed program, (4) ability to finance and operate the proposed program, (5) compliance with non-discrimination requirements, (6) proof of insurance, (7) information relating to historic preservation, (8) environmental information, (9) local government notification, and (10) zoning and local use restrictions.

**2. Available** – Property made available by landholding agency for homeless use by HUD/HHS.

**3. Eligible organization** – A State, unit of local government, or private, nonprofit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

**4. Excess property** – Any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. § 483.

**5. Expression of Interest** – An 'Expression of Interest' should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, nonprofit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

**6. Federal Property Information Checklist (FPIC) [see Federal Management Regulation (FMR) part 102-75.125 thru 102-75.140]** – A listing of property information and characteristics used by HUD to determine suitability for homeless use under the McKinney-Vento Act requirements.

**7. ICH** – Interagency Council on the Homeless.

**8. Negotiated Sale (see FMR Part 102-75.880)** – Executive agencies may conduct negotiated sales only when:

- a. The estimated fair market value of the property does not exceed \$15,000;
- b. Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;

c. The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids, and the fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

d. The disposals are for states, territories, or other political or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiations. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

e. Negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as disposal of power transmission lines for public or cooperative power projects.

**9. Public Benefit Conveyances (see FMR 102-75.350)** – Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation.

**10. Public Sale (see FMR 102-75.935)** – Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

**11. Real Property Classifications** – “Suitable/Available,” “Suitable/Excess,” “Suitable/Unavailable,” and “Unsuitable.”

**12. Representative of the Homeless** – A State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

**13. Suitable** – After reviewing the FPIC, a determination is made by HUD on the suitability of the property for homeless use. Certain properties are granted suitability exemptions for conditions including national security concerns, flammable or explosive materials, runway clear zone or military airfield clear zone, floodway, documented deficiencies, or inaccessibility. Exempt categories of suitable properties include:

a. Machinery and equipment.

b. Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

c. Properties subject to special legislation directing a particular action.

- d. Properties subject to a court order.
- e. Property not subject to survey requirements of Executive Order 12512 (rescinded by EO 13327).
- f. Mineral rights interests.
- g. Air space interests.
- h. Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.
- i. Property interests subject to reversion.
- j. Easements.
- k. Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency.

**14. Unavailable** – If a property is declared unavailable by the landholding agency, compelling reasons that are different from suitability reasons must be furnished in a written statement to HUD. Examples of properties listed as unavailable by the Federal Register include: needs rehab, off-site use only, poor condition, lead paint/asbestos present, needs repair.

**15. Underutilized** - An entire property or portion thereof, with or without improvements, used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. By law, property under an enhanced-use lease is not considered underutilized.

**16. Unsuitable** – After HUD reviews the Federal Property Information Checklist for environmental, floodway, current use, and other characteristics, the property may be determined unsuitable for homeless use. No specific use or project is considered in this review, only general requirements for any property.

**17. Unutilized** - An entire property or portion thereof, with or without improvements, not occupied for current program purposes, or occupied in caretaker status only.