

ENHANCED-USE LEASE PROGRAM

1. REASON FOR ISSUE: This handbook revises Departmental procedures for the Enhanced-Use Lease (EUL) program.

2. SUMMARY OF MAJOR CHANGES: This is a revised handbook that

a. Includes updates to the 2011 handbook, that address updated Congressional authority 38 U.S.C. §§ 8161 – 8169 and the West Los Angeles Leasing Act of 2016.

b. Incorporates the Office of Inspector General's requirement to insure that all Enhanced Use Lease (EUL) projects comply with appropriate seismic safety standards.

c. Incorporates updates to comply with the two recommendations by the "Government Accountability Office 2016 audit "Management Improvements Could Help VA Better Identify Supportive Housing Projects."

(1) Improving internal controls for documenting the selection process through completion of EUL projects.

(2) Updating EUL Policy (this Handbook) and clarifying the process to properly identify and screen potential EUL projects to meet the needs of Veterans.

d. Includes updates to several References (attachments) to the handbook.

3. RESPONSIBLE OFFICE: The Office of Management (004) is responsible for the contents of this handbook.

4. RELATED DIRECTIVE: VA Directive 7415, Enhanced-Use Lease Program.

5. RESCISSIONS: VA Handbook 7415, Enhanced-Use Lease Program Policies and Procedures, dated December 21, 2011.

CERTIFIED BY:

/s/
Dat Tran
Acting Assistant Secretary for
Office of Enterprise Integration

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

/s/
Edward J. Murray
Acting Assistant Secretary for Management
and Acting Chief Financial Officer

Distribution: Electronic only

(This Page Intentionally Left Blank)

ENHANCED-USE LEASE PROGRAM

Table of Contents

1. INTRODUCTION

 Purpose 5

 Background 5

2. ENHANCED-USE LEASE PROCESS AND PROCEDURES

 Development 7

 Capital Asset Management..... 7

 EUL Phases 7

3. REPORTING REQUIREMENTS 8

4. DEPARTMENT’S ENHANCED-USE LEASE PROJECT LIST 10

5. FORMULATION PHASE

 Concept Paper..... 11

 Preparatory Planning 11

 Use of OAEM Support Contract..... 13

 Concept Paper..... 14

 Approval Notification..... 14

 Officials with Project Execution Responsibilities 14

 Reporting Requirements..... 15

 Public Hearing 15

 Direct Source Leasing 16

 Use of FAR and VAAR 17

 Solicitation Procedures 17

 Reporting Requirements..... 17

 Bid Terms Agreement..... 17

 Developer Selection and Notification 18

 Protests 18

 Ongoing Environmental and Historic Preservation Planning..... 18

 Appraisal and Reporting Requirements 20

 Project Financing..... 20

 Real Estate Advisory Services 20

 Market Value 20

 Congressional Notice of Intent to Enter into an Enhanced Use Lease..... 21

 Lease Development, Finalization and Reporting Requirements 21

 Records management 24

6. EXECUTION PHASE 25

7. STEADY STATE PHASE

 Lease Administration 27

8. OTHER RESPONSIBILITIES

- Deposits of Monetary Proceeds..... 28
- Use of Funds 28
- EUL Reimbursement Policy and Procedures..... 28
- Department Asset Initiatives 28
- Project Financing..... 28
- Reimbursements 28
- Inspector General Reporting 28

9. TERMINATION AND DISPOSAL PHASE 29

ENHANCED-USE LEASE PROGRAM

CHAPTER 1 – INTRODUCTION

1. Purpose. The Enhanced-Use Lease (EUL) program is an important component of the Department's capital asset management functions. The EUL program is an innovative method of acquiring, goods and services in support of achieving departmental goals and objectives. In return for allowing VA capital assets to be developed by an EUL, per Title 38, U.S.C. §8162(b)(3), VA may receive fair consideration (or no consideration) as determined by the Secretary.

2. Background.

a. The EUL authority was originally enacted in 1991, under sections 8161 through 8169 of Title 38 U.S.C. §§8161 – 8169; however, that authority expired December 31, 2011. The EUL authority was reinstated in 2012, in modified form via Public Law 112-154, Section 211, through December 31, 2023, and that authority was further modified by the West Los Angeles Leasing Act 2016. The current authority and the West Los Angeles Leasing Act of 2016, are attached to this handbook, Reference A and on the OAEM Web site: <https://vaww.va.gov/oaem/>. Under this authority, VA may lease land or buildings under the jurisdiction or control of the Secretary to a public or private entity for a term not to exceed 75 years. The leased property may be developed for only supportive housing, provided such use is consistent with and does not adversely affect the mission of VA. The proposed leased property must include space that may be used to improve health care services to eligible Veterans. Benefits to VA from an EUL may include cost savings, cost avoidance, and revenue. Other benefits may include benefits to the local community, such as an increase in local employment and tax revenues for the local, state and Federal sectors.

b. Under the EUL authority, VA is not required to follow the Federal Acquisition Regulation (FAR) or the Veterans Affairs Acquisition Regulation (VAAR) when selecting the EUL lessee, but use of the FAR/VAAR as guidelines will help ensure the integrity of the selection process. Although Congress chose to exempt the EUL authority from an array of Federal statutes, VA must abide by all Federal environmental laws (e.g., the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA) and the National Historic Preservation Act (NHPA).

3. Roles and Responsibilities.

a. **Office of Asset and Enterprise Management (OAEM)** – OAEM is an office within Office of Management (OM) and is responsible for providing leadership and guidance associated with implementing the EUL 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 OGC; assuring proper

documentation; coordinating with appropriate Departmental offices and activities (and other Federal and non-Federal entities), Additionally, OAEM is responsible for ongoing portfolio management and lease compliance of EUL projects that are in the Steady State phase.

b. Office of Construction & Facilities Management (CFM) – CFM is a staff office located within the Office of Acquisition, Logistics, and Construction (OALC) whose mission is to provide facilities and technical consulting services for VA customers. CFM provides subject-matter expertise in environmental and historic preservation compliance, facilities and master planning, facility assessment, construction standards, prospectus-level and build-to-suit leasing, and land management. CFM is the only VA office with authority to execute disposal actions (other than EUL), easement agreements, most license agreements, and concurrent jurisdiction actions. CFM also manages a number of indefinite delivery indefinite quantity (IDIQ) contracts for real estate-related technical support, analysis, and subject-matter expertise, including EUL support contracts. In areas where CFM is the office of primary responsibility, the organization should be consulted and/or requested to provide concurrence.

c. Office of General Counsel (OGC) – The Real Property Law Group (RPLG) within OGC is responsible for providing proactive, full service legal support, advice, and assistance for VA-related matters involving the areas of real property, personal property, leases, construction, environmental, EULs, and energy matters. RPLG provides legal guidance on EUL matters related to the EUL Statute.

d. Office of Capital Asset Management and Engineering Service (OCAMES) – OCAMES provides the Veterans Health Administration's (VHA) policy, guidance, oversight, and budget management for the following programs: Major Construction, Minor Construction, Non-Recurring Maintenance (NRM) program, Leasing, Space Criteria, Design and Planning, EUL, and Enhanced Use Sharing. OCAMES is responsible for coordinating all VHA's EUL efforts with OAEM.

CHAPTER 2 – ENHANCED-USE LEASING PROCESS AND PROCEDURES

1. Development. The development of an EUL project requires compliance with established policies and procedures during each phase of project development, as described in Chapter 5 of this handbook. Additional information is provided through Web links to VA Directive 7415, Enhanced-Use Lease Program Policies and Procedures, which is located on the OAEM Web site: <https://vaww.va.gov/oaem/>. A "Quick Reference Guide" to the EUL program is located in Reference B.

2. Capital Asset Management. VA utilizes a comprehensive, centralized approach in the management of its capital assets. This approach enables VA to closely align asset decisions with its mission and strategic goals, elevate awareness of its assets, and use performance management techniques to monitor asset performance through the entire lifecycle of an asset. Accordingly, all EUL projects will be developed, managed and tracked throughout their lifecycle in VA's database system according to the lifecycle of the EUL projects. The lifecycle of EUL projects are in four phases:

- a. Formulation
- b. Execution
- c. Steady State
- d. Disposal (if applicable)

3. EUL Phases. To enter the formulation phase, EUL projects must be identified as valid Departmental priorities and included on the Department's EUL Project List, as described in Chapter 4. As described in Chapter 5, EUL projects are considered to be in the formulation phase until the lease execution date; in the execution phase as described in Chapter 6, from the time of lease signing until their acceptance, commencement, or activation date; in steady state phase as described in Chapter 7, from the date operations begin and commencement or activation of any development or improvements required by the EUL until their termination date; and in the termination and disposal phase as described in Chapter 9, from the Secretary's initiation of transfer proceedings until VA no longer owns the EUL property. An overview of the EUL process requirements and timetables is located in Reference C.

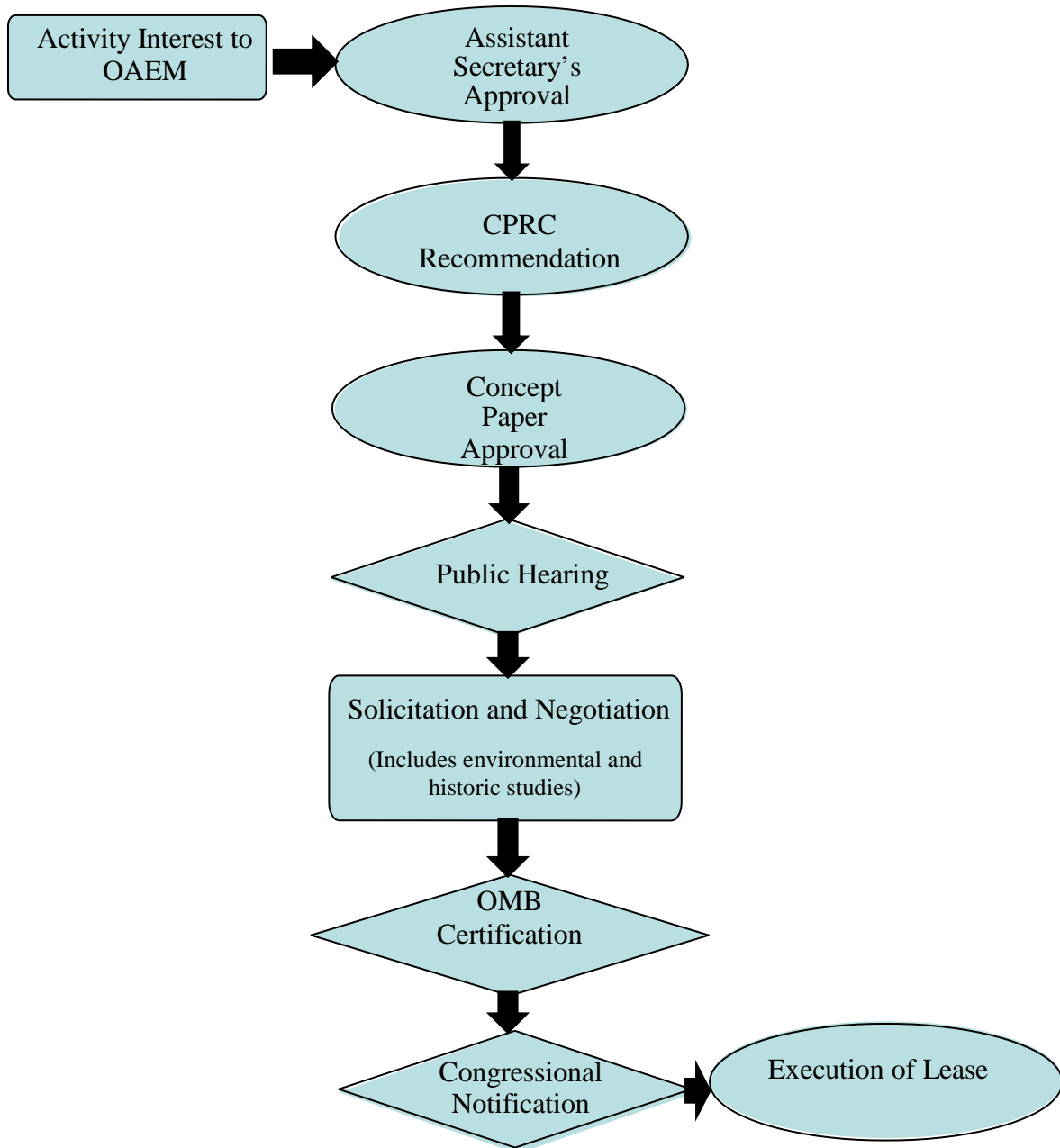
CHAPTER 3 – REPORTING REQUIREMENTS

Milestones, approvals and supporting documents that occur during the formulation, execution, steady-state, and disposal phases of EUL projects must be filed in the OAEM Electronic Record Center (EUL SharePoint site, <https://vaww.portal2.va.gov/sites/OAEMrecords/Final%20EUL%20Project%20Files/Forms/AllItems.aspx>). The Staff Office responsible for the project (as defined in this handbook) will ensure that all documents are appropriately and accurately recorded. Milestones and approvals requiring reporting will be entered within 10 business days of completion.

EUL Process Flow Chart

After initial EUL interest is received from the appropriate office, OAEM performs preliminary review of the underutilized asset to determine if an EUL is feasible. This preliminary review includes: site and location review; a review of the surrounding real estate market conditions; review of VA Medical Center needs; a review of the Veteran population to be served (prospective tenant/occupancy demand); an understanding of state, local and Veteran Service Organization support for the project; and understanding as to the likelihood that capital and operational financing can be obtained. After feasibility is determined, OAEM will coordinate efforts to add the potential project to the Department list.

(Balance of Page Intentionally Left Blank)



CHAPTER 4 – DEPARTMENT’S EUL PROJECT LIST

The “Department’s Enhanced-Use Lease Project List” is the list of EUL projects that have been recognized by the Assistant Secretary for Management (AS/M) as meeting Departmental objectives for the EUL program and, accordingly, are appropriate for expenditure of VA resources toward development. The process for placing projects on this list begins with a request from the initiating organization. Each Administration or Staff Office should develop and conduct an internal prioritization process for identifying projects for inclusion on this list. Organizations will submit requests to the Service Director and the Service Director will make recommendations through the Designated VA Representative (DVR) to the AS/M based upon the availability of resources to successfully bring the project(s) to fruition. Following AS/M approval OAEM, will notify the requesting organization of the project's status, and OAEM will maintain a listing of approved projects. To review the status of approved projects, refer to the OAEM Web site at: <https://vaww.va.gov/oaem/>.

OAEM will provide an updated EUL Project List to CFM at the start of every Fiscal year for strategic planning purposes.

CHAPTER 5 – FORMULATION PHASE

1. Concept Paper. The concept paper should be entered into Strategic Capital Investment Plan (SCIP) Automated Tool (SAT).

2. Responsible Offices

a. Veterans Health Administration (VHA) Projects. The VHA point of contact for EUL projects is the Director, OCAMES. OCAMES will secure all required concurrences from its own organization, including concurrence from the Concept Paper Review Committee (CPRC) as noted in paragraph 4.c); of this chapter. At a minimum, concurrence/approval from the Deputy Under Secretary for Health for Operations and Management (10N) must be included.

b. Veterans Benefits Administration (VBA) Projects. The VBA point of contact for EUL projects is the Director, Office of Facilities, Access and Administration (OFAA) (20M3). OFAA will secure all required concurrences within its own organization, including concurrence from the CPRC as noted in paragraph 4.c); of this chapter. At a minimum, concurrence/approval from the Deputy Under Secretary for Benefits must be included.

c. National Cemetery Administration (NCA) Projects. The NCA point of contact for EUL projects is the Design and Construction Service (43B). The Design and Construction Service will secure all required concurrences needed within its own organization, including concurrence from the CPRC as noted in paragraph 4.c); of this chapter. At a minimum, concurrence/approval from the Deputy Under Secretary for Memorial Affairs must be included.

d. Joint Administration Projects. EUL concept papers are submitted to OAEM via OCAMES after appropriate concurrences are received from each Administration involved in the project as outlined above.

3. Preparatory Planning.

a. Initial Idea. Prior to the decision to develop a concept paper, the responsible office may add potential EUL assets to the SAT through the SCIP action plan submission process, which should include preliminary background information that will be useful in assessing the potential project's viability, impacts, costs, and benefits.

OAEM will conduct an initial analysis/study on each potential EUL prior to entering the Concept Paper Review Process and adding the EUL to the Department's List. The initial analysis/study will include the following objectives:

- (1) A review of the existing title and encumbrances of record for the real estate being considered for an EUL.
- (2) An review of any environmental considerations or issues, and assessment of

potential historic preservation issues that currently exists.

- (3) A review of utility access to the EUL site.
- (4) A review of market conditions, such as homeless populations to be served, and the services they may require from the local medical center homeless coordinator
- (5) An analysis of potential project support from the public, state/local government, and Veteran Service Organizations.
- (6) An analysis of potential project support from local Public Housing Agencies.
- (7) A review of potential financing sources for the project.

b. Preliminary Inspection. This inspection usually involves the location and physical description of the unused or under-utilized VA land and facilities, such as acreage, buildings, and layout of the site; impacts of the adjacent development(s); observation of the site and facility conditions; and physical limitations such as local, state or federal limitations on the site (e.g., zoning, environmental and historic preservation). Particular attention should be paid to the impact on VA's continuing operations, if any, on the land to be developed. For instance, if a project will be located on a portion of an active VA Medical Center (VAMC) campus, impacts such as traffic, noise, construction dust/debris, and safety should be examined. EULs are stand-alone projects on an out-leased parcel of real estate that in many cases are not integrated in the VAMC utility infrastructure however; care should be taken to ensure that the EUL compliments the existing campus infrastructure.

c. Establishment of Property Baseline. A baseline would include documents pertaining to the site under consideration such as title files, legal descriptions, site plans, surveys, drawings and aerial photographs, utilities, flood plain maps, local zoning and code requirements, and local comprehensive plans (development plans).

d. Establishment of Environmental and Historic Baseline. A baseline includes existing environmental documents such as the CERCLA, RCRA and NEPA assessments abatements and/or remediation projects to date; environmental and operating permits; endangered species or habitat data (wetlands); historic designation; Presidential Executive Orders; and any existing agreements between VA and the State Historic Preservation Office(s) (SHPO) or Advisory Council on Historic Preservation (ACHP). EUL projects are subject to all applicable Federal, State, and local environmental laws, codes, ordinances, and regulations, including but not limited to, CERCLA, 42 U.S.C. §§ 9601-9675; the RCRA, 42 U.S.C. §§ 6901, et seq; and the NEPA, 42 U.S.C. §§ 4321-4347. NEPA requires that Federal agencies, including VA, identify and evaluate the potential environmental impacts of a major Federal action (e.g., an EUL) on the human environment. Tribal consultation is also required. The NEPA analysis is initiated by VA per project. NEPA analysis must be completed by OAEM prior to execution of the EUL.

e. Preliminary Asset Valuation. Valuation includes recent appraisals (e.g., 6 months to 1 year depending upon market conditions in the vicinity of the designated site of the EUL) if available and by looking at "comparable" properties in the adjacent community. A state-certified commercial appraiser can provide a written advisory opinion regarding the valuation of the proposed property given its proposed use(s) and any other potential

“highest and best uses.” PM will review and concur, if appropriate, with these appraisals to make a determination as to the property value.

f. Market Analysis. This includes an analysis of the local market, including other property available, development potential of the market, possible alternatives to the proposed project, and current and anticipated supply and demand conditions affecting the project.

4. Use of OAEM Support Contract.

a. Indefinite Delivery Indefinite Quantity (IDIQ). An IDIQ contract may be awarded to support EULs. This contract or successor contracts may be used to support the preparatory planning described in paragraph 3 of this section. Research, analysis, evaluation of VA real estate and outside real estate markets, interpretation, consultation and advice, and preparation of necessary documentation would be part of that IDIQ contract.

b. Expert Use. Following submission and approval of an EUL concept paper, OAEM may also elect to utilize expert contract services such as asset management, real estate advisory, feasibility, environmental, valuation, legal support, and transaction management to support the continuing formulation effort described below from the IDIQ contracts. To the extent these services are included in existing OAEM contracts, existing contracts should be utilized.

c. Services Procedure. All required contract services will be initiated via task order request encapsulating the objectives outlined in the support contract. No statement of work may be edited or changed in any way without written permission of the project contracting officer or the contracting officer’s representative.

d. Additional Information. Additional information, including sample Scopes of Work for tasks under the support contract, are included in Reference D.

e. Use of Legal Support. OGC’s RPLG will assist in the preparation of documentation supporting EUL projects, and will be reviewing and editing leases and exhibits (including facilities use and service agreements), easements, and other encumbrances affecting the leasehold, financial closing documents, and property disposal documents.

5. Concept Paper.

a. Application. When the preparatory steps have been completed, the responsible office will develop a concept paper application in the SAT. For a sample concept paper and a comprehensive list of the roles and responsibilities required for a concept paper application, see Reference E.

b. Concept Paper Completion. Upon completion of the concept paper in SCIP with

the necessary approvals, OCAMES will notify the Office of Investment Enterprise Development Service (IEDS) Service Director, by email, that the concept paper, concurrences and all applicable attachments have been received.

6. Concept Paper Review Committee (CPRC). In order to recognize differing requirements within each administration and assure prioritization of limited resources available for the development and execution of EUL projects, all projects entered into the Capital Asset Management System (CAMS) will be reviewed by the CPRC prior to any further expenditure of effort. The CPRC will review and recommend concept papers to the AS/M for final approval. The CPRC membership will include: OAEM; Veterans Canteen Service; Office of Operations, Security, and Preparedness, Office of Security and Law Enforcement; Office of Government Relations; CFM, and OGC. Additional members from individual administrations will include VHA projects (OCAMES and VHA Chief Financial Officer (CFO)), VBA projects (OFAA and VBA CFO), NCA projects (Design and Construction Service and NCA CFO), and any other program officials as needed. At a minimum, the CPRC shall review the concept paper for the following:

- a. Existing environmental survey
- b. Other current VAMC data validation Survey
- c. Real property baseline
- d. Available market data
- e. Evaluation of Veterans housing needs including available supportive services
- f. Estimated consideration and type
- g. Estimated appropriate lease term
- h. Commitment potential
- i. Need for capital contributions
- j. Composition of project team
- k. Justification for direct source award (as applicable)
- l. Significant legal hurdles (e.g., statutory limitations)
- m. Assessment of site vulnerabilities (security and emergency services response)

7. Approval and Notification. Based on the written recommendations of the CPRC, the AS/M will reject or approve the concept paper via formal memo, or may direct further investigation or analysis of the project in order to support reconsideration. A sample Concept Paper Approval Memo is shown in Reference F.

8. Officials with Project Execution Responsibilities. The AS/M will appoint a DVR. The DVR works within OAEM and has the delegated authority to approve payments, disbursements, and reimbursements, and to issue written correspondence needed to properly administer an EUL.

a. Service Director, Office of Investment Enterprise Development Service (IEDS). The IEDS Service Director is responsible for the day-to-day management of the EUL program which includes the formulation and execution of the EUL program and the supervision of the program management staff.

b. EUL Program Manager. The IEDS Service Director shall assign an EUL to a Program Manager (PM) the responsibility for managing the day-to-day progress of an EUL from concept paper approval through formulation, execution and up to 3 months after final completion of the EUL. The EUL PM will provide support to the IEDS Service Director as needed, and must notify the IEDS Service Director immediately of any problem areas noted in the performance of the EUL. The EUL PM shall not have any authority to change, modify, amend, or terminate any terms or conditions of the lease or other contractual document, nor may the EUL PM reassign any responsibility granted herein.

9. Reporting Requirements.

The PM is required to ensure that the concept paper approval dates and all supporting documentation are entered into OAEM Electronic Record Center within 10 business days of approval.

10. Public Hearing.

a. Hearing Notice. After receiving formal approval of the concept paper from OAEM, the PM must submit a draft public hearing notice to the Service Director. This draft must provide the proposed date, time, place and purpose of the hearing and identify both the property and use(s) proposed under the lease. It should describe how the proposed use(s) would contribute savings effectively to VA's mission, and not adversely affect or be inconsistent with it. In addition, the notice should describe how the proposed use(s) would affect Veteran services or would result in a demonstrable improvement of services to eligible Veterans in the geographic area of the property's locale.

b. Approved Notice. Following this informal notification, the Service Director will advise the PM to issue the approved notice of the hearing to the public via publication in the local media (e.g., two local newspapers) at least 28 days prior to the public hearing.

c. Guidance. Reference G contains guidance on conducting public hearings and samples of the congressional notification letters.

d. Date. Following the public hearing, the administration or staff office responsible for the project will determine whether VA should proceed with the project. If the public hearing is controversial and results in changes to the proposed project, the PM will be required to identify and address the concerns and submit written documentation of the project's changes to the initiating administration in VA Central Office as well as OAEM for further action. This documentation will also be saved in OAEM Electronic Record Center.

e. Support. At OAEM's discretion, it may have one or more VA subject-matter experts attend and provide support at public hearings.

11. Direct Source Leasing.

a. Competition. As a general rule, the EUL PM shall promote competition for all EULs by issuing a "Request for Proposals" (RFP). The RFP documents are intended to generate offers from potential developers seeking to finance, develop and operate the EUL. Ideally, any such purpose will be for the "highest and best use" for that particular site, so as to generate the maximum amount of benefit to VA in exchange for entering into the EUL.

b. Direct Source Criteria. Under limited circumstances, the DVR may directly select an EUL lessee without first issuing an RFP and conducting a competitive evaluation. These circumstances have been divided into three "tiers" or sets of requirements that must be met before pursuing a direct-source lease. EUL projects must meet the following criteria of any one tier to be eligible for a direct-source award:

(1) 1st Tier: VA can direct-source lease to a developer/lessee that will provide homeless services to Veterans and who has the requisite experience, expertise, and financial capability to perform the proposed lease.

(2) 2nd Tier:

(a) The targeted developer/lessee must be a VA affiliate (determined by VHA) or a state/local government entity; and

(b) The property proposed use(s) would represent the highest and best use consistent with VA's mission and operations; and

(c) Only one developer/lessee is capable of developing the property into and operating the property as the contemplated property use; OR The contemplated property use is one that both VA and the targeted developer/lessee presently need to support their mission activities; and

(d) A "Request for Expressions of Interest" (REI) is issued (i.e. approved by OAEM and published on FBO.gov and in a local forum like a newspaper) and no interested offerors besides the targeted developer/lessee timely respond to the REI. (Note: The REI scope shall be the same scope as proposed by the targeted developer/lessee to ascertain if there are other parties interested in developing the property into the same highest and best use consistent with VA's mission and operations).

(3) 3rd Tier:

(a) A national security event or circumstance necessitates that VA proceed with direct source leasing an underlying EUL project to one identified developer/lessee; or

(b) An international agreement between the United States and another governmental entity exists pursuant to which only one responsible developer/lessee exists for the proposed EUL project; or

(c) A direct source lease to one specific developer/lessee is explicitly required or authorized by Federal statute.

c. Direct Source Leasing Memorandum. For all instances in which a non-competitive selection is being considered, a written “Direct Source Leasing Memorandum” must be prepared that addresses the requirements of paragraphs 11.b.(1) and (2) in this chapter as applicable and submitted for concurrence by OGC and approval by the DVR prior to the public hearing. Refer to Reference H for a sample memorandum.

d. Commitment of Funds. VA funds should not be committed to projects proposed for direct-source awards beyond the preparation of the concept paper until eligibility for such an award under the above-noted criteria has been confirmed. Also, for all direct source leases that are proposed pursuant to the “2nd Tier” criteria discussed in paragraphs 9.b.ii. 1 and 2 in this chapter, an REI will be required to determine the existence of other potentially suitable candidates for the lease. Should the known sole party be the only respondent to the REI, appropriate due diligence will be deemed to have been performed and the DVR may proceed. However, if the REI results in the identification of additional potential lessees, a full and open competition will be required.

e. Use of FAR and VAAR. It is important to note that neither VA’s EUL authority nor solicitations issued are bound by the FAR or VAAR. These regulations, however, are normally used as guidelines for the content, format and evaluation of EUL solicitations. For purposes of evaluating a direct-source leasing request, the above guidance will be used for initial review and determination.

12. Solicitation Procedures, Forms, Agreements and Reporting Requirements.

Sample documents including an RFP, public advertisements, and a source selection plan, are available in Reference I.

13. Reporting Requirements. The PM is required to report the solicitation and supporting documentation in OAEM Electronic Record Center within 10 business days of the selection of the preferred developer/lessee.

14. Bid Terms Agreement (BTA). Upon the selection of the preferred developer/lessee, VA may enter into a (BTA) with the developer/lessee. The BTA is a binding agreement that outlines the obligations of the developer/lessee and VA from the

developer/lessee selection date until the execution of the lease and the closing date of the transaction. A BTA is provided in Reference J.

15. Developer Selection and Notification. The DVR is responsible for selecting a preferred developer/lessee in accordance with the policies and mandates of the EUL authority. The EUL PM, with guidance from the Service Director, will be the point of contact for negotiations and finalization of all business terms. With support from OGC, and contracted legal support as needed, the EUL PM will finalize all legal terms of the proposed lease and associated commercial and applicable financial documents. After VA completes all environmental, historic and/or other requirements, the selected developer will be notified by the Service Director of the course of action both parties will undertake to enter into an EUL.

16. Protests. VA may receive a complaint or protest from a third party challenging VA's selection of a preferred developer/EUL lessee. For example, such an entity may challenge VA's justification for a direct source selection or may allege wrongdoing by VA in connection with its evaluation of proposals under an RFP seeking an EUL lessee. In all instances where the PM responsible for the project becomes aware of a protest or the reasonable likelihood of a protest or claim, the PM should promptly contact the Service Director and DVR so OAEM can assess the situation.

17. Ongoing Environmental and Historic Preservation Planning, Compliance and Reporting Requirements. The PM is responsible for ensuring three basic actions are accomplished in parallel to comply with most Federal environmental and historic preservation laws before VA can execute an EUL.

a. Hazardous Substances. The first action is to investigate the property (buildings and/or land) being proposed for EUL to identify the presence or likely presence of any hazardous substances and/or contaminants, including those as defined by the CERCLA (Title 42 U.S.C. §§9601-9675), and/or asbestos-containing materials, lead-containing materials, radioactive substances, or petroleum products contained in below or above-ground storage tanks.

(1) Phase I: Environmental Site Assessment. The investigation and documentation process should be conducted generally in accordance with the American Society for Testing and Materials (ASTM) E 1527 (latest edition) "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

(2) Phase II: Environmental Site Assessment. If evidence of contamination is discovered, the originating organization may have to perform additional investigations to better define and quantify contamination using the ASTM E 1903 (latest edition) "Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process." The information gathered will be useful in project planning and feasibility, lease negotiation and drafting, and complying with Federal real property laws and regulations regarding disclosure to a lessee of environmental contamination and hazardous substances on the leased property.

(3) Phase III: Environmental Remediation. If the Phase I or II results demonstrate 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. National Environmental Policy Act (NEPA). The second action is to analyze and determine pursuant to NEPA (Title 42 U.S.C. §§4321-4370d), whether the proposed EUL is a Federal action that would significantly affect the quality of the human environment. Procedural requirements for NEPA evaluation and documentation standards for a Categorical Exclusion (CATEX), an Environmental Assessment (EA), or Environmental Impact Statement (EIS) are defined in NEPA and the Federal implementing regulations, including VA's implementing regulations (Title 38 CFR Part 26). NEPA requires VA to examine and analyze a broad range of environmental impacts (both positive and negative as well as short and long term) potentially associated with the lease, including aesthetics, air quality, cultural or historic resources, floodplains and wetlands, economic activity, geology and soils, hydrology and water quality, land use and zoning, impacts on roads and traffic, noise, real property, surrounding populations, environmental justice, solid and hazardous waste, public utilities, vegetation and wildlife, and cumulative impacts. NEPA also requires VA to identify and assess the environmental impact of VA taking "no action" or taking other reasonable alternative actions other than carrying out the proposed EUL. For further information, refer to the NEPA Guidance for Projects (PG-18-18) document available on the CFM Technical Information Library (TIL) direct link: <http://www.cfm.va.gov/til/etc/NEPAGuidance.pdf>. NEPA documentation, including CATEX checklist, Finding of No Significant Impact (FONSI), or Record of Decision (ROD), must be entered into the OAEM Electronic Record Center by the PM.

c. National Historic Preservation Act (NHPA). The third action is compliance with NHPA of 1966, as amended (Title 54 U.S.C. §300101, et seq.). Through NHPA, Congress has mandated Federal agencies to integrate historic preservation planning and stewardship of its historic properties into their mission activities, including full consideration of potential adverse effects on properties listed or determined to be eligible for listing on the National Register of Historic Places maintained by the Department of the Interior. Therefore, caution must be used to avoid the transfer, sale, demolition, alteration, or deterioration of historic properties in violation of Federal law (e.g., NHPA) and any existing or future agreements between VA and the SHPO or ACHP. Evidence showing compliance and proposed compliance with Section 106 of the NHPA will be required before the lease can be executed. (VA remains responsible for NHPA Section 106 compliance for the project.) NHPA documentation, including SHPO concurrence, executed Memorandum of Agreement (MOA) or Programmatic Agreement (PA), must be entered into the OAEM Electronic Record Center by the EUL PM.

d. VA's Web Site. For additional guidance on VA policy and regulations pertaining to historic preservation, contact VA's Federal Preservation Officer. VA's policies and procedures for historic preservation may be found in VA Directive 7545, "Cultural Resource Management Policy," and VA Handbook 7545, "Cultural Resource Management Procedures".

18. Appraisal and Reporting Requirements. A real estate appraisal is a professional, written estimate of the target property's current fair market value as determined by an impartial party with knowledge of the local real estate markets. A primary purpose of the appraisal is to establish a value for the highest and best use of the property, if outleased to a developer. It should identify a reasonable, probable and legal use for the vacant, unimproved or improved land which is physically possible, appropriately supported through market demand, financially feasible, and results in the highest level of value to VA. In doing so, VA may use the appraisal to establish a value of the leasehold property interest that VA will be conveying to the preferred developer/lessee and determine the appropriate level of consideration that VA should receive in exchange for the EUL. Thus, the appraisal serves as an invaluable negotiation tool for VA when negotiating the terms and conditions of the lease with the preferred developer/lessee. See Reference D for a sample appraisal Scope of Work. The appraisal document and any value determination remains confidential and may not be shared or disclosed to anyone outside of VA without prior VA and OGC approval.

19 Project Financing. Regardless of the business, legal or financing structures, or capital market techniques to be used, the financial feasibility of the proposed EUL project lies partly in the location and value of the VA real estate and improvements involved. The EUL PM and IDIQ contractor should review the developer's pro-forma to verify the accuracy of the numbers and ratios submitted by the developer to mitigate downside risk to OAEM. The EUL PM and IDIQ should also analyze the developer's assumptions prior to the developer applying for financing.

20. Real Estate Advisory Services. Property valuations needed to support an EUL project development and the applicable VA justifications must be performed by real estate professionals. As a result, all professional services (e.g., market, financial, and real estate services) in support of EUL initiatives may be obtained via an approved EUL Real Estate Advisory Services IDIQ task order request, as described above in paragraph C. of this chapter.

21. Market Value. It is important to keep in mind that VA's EUL statute (Title 38 U.S.C. §§8161-8169) requires that each EUL shall be for fair consideration, as determined by the Secretary. This is a key point since commercial appraisals primarily focus on analyzing "market value," which is the most probable price in cash, terms equivalent to cash, or in other revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for their self-interests, and without undue duress. Given these considerations, it is possible that "fair consideration" to VA may or may not equal an appraiser's opinion of the real property's "market value." The appraisal process is not a scientific process but is rather an educated opinion of market value, at a particular time. VA must ensure each appraisal takes into account all pertinent criteria (i.e., the proposed land use on the target EUL property) when assessing the value differential between the "market value" and "fair consideration."

22. Certification from Office of Management and Budget (OMB). Pursuant to the provisions of Title 38 U.S.C. §§ 8162, “The Secretary may not enter into an enhanced-use lease without certification in advance in writing by the Director of OMB that such lease complies with the requirements of this subchapter.” [38 USCS §§ 8161 et seq.]. This certification must be received prior to submission of the Notice of Intent to Enter (NOIE) to Congress. The following documentation needs to be completed prior to submission to OMB for certification:

- a. Final draft of EUL and its exhibits
- b. OGC Memo to indicate EUL is in compliance with 38 U.S.C. § 8161, et seq
- c. Draft NOIE and Federal Register Notice

23. Congressional Notice of Intent to Enter (NOIE) into an EUL. Pursuant to the provisions of 38 U.S.C. § 8161, et seq., “Enhanced-Use Leases of Real Property,” the Secretary of the Department of Veterans Affairs (the “Secretary” or “VA”) shall provide the following Senate and House Congressional committees: Veterans Affairs, Budget and Appropriations, a NOIE into an EUL at least 45 days in advance of EUL execution. OAEM drafts the NOIE, the letters to the Chairmen and Ranking Members of the Congressional committees, and the Federal Register Notice. The NOIE, letters, and Federal Register Notice include a brief summary regarding the lessee’s plan to develop the subject real property and provide benefits and or services to eligible Veterans.

a. NOIE Requirements. The NOIE must contain the following:
Identification of the EUL property, and proposed use(s) Description of how the lease will contribute in a cost-effective manner to benefit Veterans. The NOIE shall explain how the project is consistent with the VA’s mission.

- b. **Sample NOIE.** Reference L contains a sample NOIE package.

24. Lease Development. During EUL process, other items of importance are considered.

a. Requirements for Earthquake Safety for EULs: The EUL lessee shall certify to VA that buildings are designed, constructed, or altered, respectively, in accordance with appropriate earthquake-resistant design and construction codes and standards in compliance with the earthquake resistant design provisions of the 2015 editions of the International Building Code (IBC) or the International Residential Code (IRC), nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent codes, consistent with the provisions of, and to the extent required by, 40 U.S.C. 3312. This requirement applies to new buildings and improvements and alterations to existing Buildings within an EUL.

- b. **Low-Income Housing Tax Credits and Internal Revenue Code (IRC) §42.**

(1) Almost all low-income supportive housing EULs are financed in part with some form of tax credit financing. IRC §42 governs the Low Income Housing Tax Credit

(LIHTC) program. The LIHTC program provides a source of capital financing that does not require repayment and is not a burden or encumbrance neither on the EUL project, nor on VA, and it is a critical tool for incentivizing private companies to develop and maintain affordable housing. Each state has a Housing Finance Agency (HFA) that assumes responsibility for allocating tax credits to developers. The process by which the HFA allocates the credits is typically competitive and uses criteria enumerated in the state's Qualified Allocation Plan (QAP).

(2) Under IRC §42(h)(6), buildings are eligible for the low-income housing credit only if the "Owner" has entered into an extended low-income housing commitment. Owner refers to the owner of the building which in an EUL is the lessee and the Owner is required to sign an Extended Use Agreement ("Agreement") that must be recorded pursuant to state law as a restrictive covenant against the leasehold interest of the EUL. The term of the Agreement is at least 30 years, beginning on the first day of the compliance period and ends on the later of the date specified by the state agency or 15 years after the close of the 15-year compliance period under IRC §42(i)(1). IRC §42(h)(6)(E)(i) describes two circumstances by which the Agreement can be terminated:

(a) the building is acquired through foreclosure, or

(b) the state agency fails to present a qualified contract for the acquisition of the LIHC building (or part thereof) by a party who will continue to operate the building (or part thereof) as low-income housing. In the event that the Agreement is terminated, IRC §42(h)(6)(E)(ii) provides existing low-income tenants protection against two events for three years following the termination. These events are:

1. The eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

2. Any increase in the gross rent with respect to such unit not otherwise permitted under IRC §42.

(3) VA cannot be a party to the three-year tenant protection period, as this could potentially extend the term of the contemplated EUL beyond the agreed upon terms. Additionally, VA has no legal authority to directly provide housing for the three-year tenant protection period.

(4) When tax credit financing is used to finance an EUL, the lease must contain language that ensures the lessee will have a third party (lender, mortgagee, syndicator, et al) agree to assume the lease and manage and operate the EUL facility in the event of early termination in order to comply with IRC §42.

c. Easements. Used to grant access rights for specific purposes. Utility easements are often needed in EUL's to install and maintain utility infrastructure. In some cases, the grantor is VA, granting the utility company or lessee rights outside the EUL boundary. In some cases, the grantor is jointly VA (as the owner of the land) and the lessee (as

having a leasehold interest in the land), granting the utility company or VA medical center rights to improvements or property inside the EUL boundary. Easements may be temporary for a certain amount of time (years), or they may be permanent/perpetual. Easements should be recorded prior to or at the same time as the lease to provide assurances to the funders. Delays in obtaining approval for easements can negatively impact the project timeline and delay financial closing. EUL easements must be obtained through CFM. Other than access rights (ingress and egress and rights of way) to an EUL parcel which are discussed in the terms of an EUL Lease, OAEM should not make any representations or commitments, or prescribe any terms or conditions, regarding easement agreements or their contents in the EUL agreement. Early coordination with CFM is necessary as the timeline for granting an easement over VA land can take 2-3 months and the timeline for acquiring an easement from another party can extend to 12-18 months. The PM may request an easement from CFM by submitting a request through CFM's Sharepoint Portal, located at <https://vaww.vaco.portal.va.gov/sites/CFM/RealProperty/Portal/SitePages/Home.aspx> All easements for utilities and rights of way are executed by CFM and should be in place prior to VA executing the EUL.

d. Revocable Licenses. A revocable licenses grant is used to allow a particular user to access VA's property for a specified purpose and within a specified timeframe. CFM delegated authority Veterans Integrated Service Network (VISN) Directors (most of whom have in turn delegated authority to VAMC Directors) to execute revocable license grants for terms of up to five years. Revocable licenses may be used in lieu of an easement temporarily while easements are in the process of being finalized and approved; however, some lenders require easements and will not accept revocable licenses if long-term access is required. Revocable license grants of greater than 5 years and all revocable license acquisitions must be accomplished through CFM. The PM may request a revocable license from CFM by submitting a request through CFM's Sharepoint Portal, located at <https://vaww.vaco.portal.va.gov/sites/CFM/RealProperty/Portal/SitePages/Home.aspx>

e. Finalization and Reporting Requirements. An underlying EUL may be executed 45 calendar days after the NOIE is signed by the Secretary, transmitted to Congress, and published in the Federal Register.

(1) During lease development and finalization stage, OGC will have responsibility for all legal matters involved with the lease. OGC and contract attorneys (as needed) will be responsible for ensuring that the documents are legally sufficient.

(2) VA's EUL lease template is attached in Reference K. This sample is provided for general information purposes only, may not be appropriate for the specific project being considered, and may not be representative of current terms and legal requirements. Accordingly, such documents must not be released outside of the agency.

25. Records Management. It is the policy of IEDS to effectively and efficiently manage all official EUL project-related records, regardless of media format, throughout their life cycle. EUL project records required for current operations are to be stored in hard and digital copy within OAEM in accordance with the procedures outlined in OAEM, IEDS Standard Operating Procedures for Records Management.

CHAPTER 6 – EXECUTION PHASE

1. The signing of an EUL starts the transition from the formulation phase to the execution phase, where VA grants the lessee the right to enter upon the leased real property, to develop, operate, and maintain it in accordance with the terms of the lease. When transitioning from the formulation to the execution phase, the PM is required to save a complete copy of the executed lease in the OAEM Records Center site within 10 business days of execution.

2. During any construction associated with the EUL, the PM will work with a Local Site Monitor (LSM). The LSM is appointed by the DVR in coordination with the VAMC Director and the VISN Capital Asset Manager. It is the LSM's responsibility to monitor and provide oversight of the day-to-day construction of the EUL project. The LSM assures that such construction is conducted and completed in compliance with the requirements of the lease.

3. Responsibilities.

a. EUL PM Responsibilities. The EUL PM will serve as VA's representative during the construction/renovation period and is responsible for overseeing post-execution lease administration. The Service Director is authorized to undertake the necessary day-to-day action measures to ensure prompt performance of all necessary actions and compliance with the terms and conditions of the lease. The DVR is authorized as the Secretary's designated official to administer the EUL program.

b. Monitoring. VA will monitor developer's performance and actions (including but not limited to: physical inspections, design and construction document review, site visits and inspections, making inquiries, and other actions) per the terms and conditions of the EUL. Such monitoring includes the performance of those entities acting for, on behalf of, or pursuant to the developer's rights under the lease. Note: the appropriate level and scope of VA's review of the EUL lessee's and its representatives' activities will vary, depending on the particular type of EUL project involved. For example: VA may have a greater interest in reviewing other parties' activities and obligations if the EUL will have a direct impact on VA's missions or operations.

c. Lease Enforcement. The EUL PM will enforce the lease and advise the Service Director of the need for VA to send correspondence to the developer or his/her designated representative of any instance of failure to perform under the terms and conditions of the lease.

d. Recommendations. The EUL PM will recommend VA actions to the Service Director to address the developer's failure to perform under the terms and conditions of the lease.

e. Developer Changes. The EUL PM and the LSM will review, coordinate, and recommend to the Service Director any developer-requested changes to its design

plan, development plan and/or operations and maintenance plan or to its performance/provision of agreed in-kind consideration to VA.

f. VA-Requested Changes. The EUL PM will coordinate, negotiate, and with assistance from the OGC prepare requested changes to the lease and exhibits with the EUL lessee.

g. Disputes. The EUL PM will prepare all necessary documentation, findings and determinations regarding any disputes arising between VA and the developer. (Note: During the EUL term, an EUL lessee may seek to and/or file an EUL-related complaint, claim, or dispute with VA or an adjudicative entity as having legal jurisdiction over the matter. The EUL PM should promptly contact the Service Director upon learning that a complaint, claim, or dispute has been or soon will be filed. Depending upon the circumstances, the Service Director may require the EUL PM to prepare and submit all relevant materials concerning the matter to the Service Director, so such items can be reviewed and assessed (with OGC if necessary), in part on whether a written “final decision” or settlement offer should be issued to the complainant.)

h. Amendments. If a lease amendment is required, it must be submitted through OAEM to the AS/M. The EUL PM should prepare all necessary documentation, justification and approvals prior to submitting to the AS/M through the Service Director and DVR.

i. VA Compliance. The EUL PM will assure that VA complies with the EUL terms and conditions, including meeting its obligations for timely reviews, notices and consents (or rejections).

CHAPTER 7 – STEADY STATE PHASE

Lease Administration. The completion, acceptance, and commencement or activation date of any development or improvements required by each EUL triggers the transition of the project from execution phase to the steady state phase. OAEM's Capital Asset Management Service (CAMS) Director serves as the oversight monitor for the entire steady state portfolio. The CAMS Director's responsibilities consist of the overall monitoring and management of the EUL to include its performance and provision of agreed-upon in-kind consideration to VA, and compliance with lease requirements. Such responsibility will not include the authority to execute any amendments/modifications to terminate the EUL and/or its exhibits, as this responsibility resides with the AS/M. The CAMS Director should be contacted in the event of any likely amendments/modifications to or terminations of the lease, as proposed by the developer/lessee.

CHAPTER 8 – OTHER RESPONSIBILITIES

1. Deposits of Monetary Proceeds. All monies paid to VA as proceeds from EULs, less deductions of approved expenses as discussed in paragraph 3 below, shall be promptly deposited into the Medical Care Collections Fund (MCCF) pursuant to Title 38 U.S.C. §8165(a)(1) and thereafter administered in accordance with Title 38 U.S.C. §1729A or other applicable provision(s) of law, regulations, and procedures. For specific guidance on the EUL payment process, see Reference M on the OAEM Web site at <https://vaww.va.gov/oaem/>.

2. Use of Funds. Prior to deposit of any EUL proceeds, expenses incurred in any fiscal year in connection with an EUL may, pursuant to Title 38 U.S.C. §8165, be deducted from the proceeds of the lease for that fiscal year and may be used to reimburse the account originally used to pay the expenses. With the approval of the Secretary, proceeds may also be used to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional EULs.

3. EUL Reimbursement Policy and Procedures. Each executed EUL project managed by OAEM may be subject to a reimbursement fee to be charged against the proceeds from the project. This charge is designed to reimburse OAEM for direct and indirect project-related expenses associated with planning, developing, executing, managing and providing legal advice and services for the respective EUL project, transactions and lease. This fee is not to exceed expenses that VA would have charged/incurred under normal business conditions.

4. Departmental Asset Initiatives. OAEM will assess the reimbursement charge on all EUL transactions and leases determined to be “Departmental Asset Initiatives.” For this purpose, such initiatives are considered significant EUL transactions developed and managed by OAEM.

5. Project Financing. Depending on the availability of financing and/or proceeds from the project, a fee may be collected at lease execution or upon closing of project financing, as determined by OAEM. Further reimbursement to cover ongoing expenses may be collected not more than annually.

6. Reimbursements. Reimbursement is subject to adjustment and may be waived by OAEM when proceeds of the EUL project are not reasonably sufficient to reimburse VA’s expenses.

7. Inspector General Report. Not later than each of two years and five years after the date of the enactment of the West Los Angeles Leasing Act of 2016, and as determined necessary by the Inspector General of VA thereafter, the Inspector General shall submit a report on all leases carried out at the Campus to the following Senate and House Congressional committees: Veterans Affairs, Budget and Appropriations, and each Member of the Senate and the House who represents the area in which the West Los Angeles VA Campus is located.

CHAPTER 9 - TERMINATION AND DISPOSAL PHASE

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.

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.

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.

Reference A

Enhanced-Use Lease Authority Title 38 U.S.C. §8161 – 8169

And

West Los Angeles Leasing Act of 2016

Reference B

EUL Quick Reference Guide

Reference C

EUL Process and Timelines

Reference D

Sample EUL Support Contract and Statement of Work

Reference E

Sample EUL Concept Paper

Reference F

Sample EUL Concept Paper Approval Memorandum

Reference G

EUL Public Hearing Guidance

Reference H

Sample Direct Source Leasing Memorandum

Reference I

Sample EUL Request for Proposal (RFP) Documents

Reference J

Sample Bid Term Agreement

Reference K
Sample EUL Lease

Reference L

Sample Notice of Intent to Enter (NOIE)

Reference M
EUL Payments Process