this section, the Secretary may also require the transferee of off-site surplus Federal real property—
   (i) To post performance bonds;
   (ii) To post performance guarantee deposits; or
   (iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) Additional terms and conditions for leases. In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) By eligible entities. A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in §12.5, only upon those terms and conditions the Secretary determines appropriate if—
   (1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;
   (2) The Secretary’s written consent is obtained by the transferee or lessee in advance; and
   (3) The Secretary approves the use instrument in advance and in writing.

(b) By ineligible entities. A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in §12.5, only upon those terms and conditions the Secretary determines appropriate if—
   (1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;
   (2) The use is confined to a portion of the surplus Federal real property;
   (3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and
   (4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))
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which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;
(B) Acts of God; or
(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in §12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) Additional sanction for noncompliance with off-site transfer. In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

§ 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary’s sole discretion, abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property transferred.

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(ii))