

Classification	Percent allowed											
	Organization allowances							Utilization allowances				Maximum public benefit allowance
	Basic public benefit allowance	Tax support	Accreditation	Hardship	Unmet needs			Integrated re-search program	Out-patient services	Public services	Training program	
					10 to 25%	26 to 50%	51 to 100%					
Assistance to the Homeless	≥ 100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	≥ 100

¹ This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted.

² Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall health program is applicable when such facilities are conveyed as a minor component of other facilities.

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PART 12a—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

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AUTHORITY: 42 U.S.C. 11411; 40 U.S.C. 550.

SOURCE: 89 FR 89898, Nov. 13, 2024, unless otherwise noted.

§ 12a.1 Definitions.

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in

which the property is located to carry out the activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with "homeless individual" and "homeless person."

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are

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equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices non-discrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of

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that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local, and nonprofit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in 24 CFR 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is 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.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 12a.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of

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Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) 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.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 12a.3 General policies.

(a) It is the policy of HHS to foster and assure maximum utilization of sur-

plus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to § 12a.10.

§ 12a.4 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to 24 CFR 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use

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to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The 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, non-profit organization. The expression of interest must be sent to HHS by email, rpb@psc.hhs.gov, or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) 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 certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 12a.5 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting ac-

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quisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 12a.1.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs

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of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (e.g., extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this

part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 45 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 45 CFR part 84. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

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(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 12a.4(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant

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extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(7) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier

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application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 12a.6 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are

appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.*, the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

§ 12a.7 Transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an "as is, where is" basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

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(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this part, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at §12a.10 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with §12a.11.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written con-

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sent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right,

title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.*, environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property

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when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 12a.12.

§ 12a.8 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this sec-

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tion, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 12a.9 No applications approved.

(a) At the end of the 30-day holding period described in § 12a.4(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 12a.10 Utilization and enforcement.

(a) *Sanctions.* For instances of non-compliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

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(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 12a.12;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will

work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 12a.11 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 12a.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 12a.12 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

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(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 12a.13 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 12a.14 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

§ 12a.15 Severability.

Any provision of this part held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

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PART 13—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

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APPENDIX A TO PART 13

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 48 FR 45252, Oct. 4, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 13.1 Purpose of these rules.

These rules implement section 203 of the Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, for the Department of Health and Human Services. They describe the circumstances under which the Department may award attorney fees and certain other expenses to eligible individuals and entities who prevail over the Department in certain administrative proceedings (called “adversary adjudications”). The Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department’s position in the proceeding was not substantially justified or if the action is one to enforce compliance with a statutory or