

Dept. of Health and Human Services

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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 re-entry 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: