

property determined to present an opportunity for such lease.”

#### ENHANCED USE LEASES

Pub. L. 104-110, title II, §202(c), Feb. 13, 1996, 110 Stat. 771, provided that: “The Secretary shall submit to Congress, not later than March 31, 1997, a report evaluating the operation of the program under subchapter V of chapter 81 of title 38, United States Code.”

### § 8162. Enhanced-use leases

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an “enhanced-use lease”. The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40, or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) is covered by subsection (c).

(2)(A) The Secretary may enter into an enhanced-use lease on or after the date of the enactment of this paragraph only if the Secretary determines—

(i) that the lease will not be inconsistent with, and will not adversely affect—

(I) the mission of the Department; or

(II) the operation of facilities, programs, and services of the Department in the area of the leased property; and

(ii) that—

(I) the lease will enhance the use of the leased property by directly or indirectly benefitting veterans; or

(II) the leased property will provide supportive housing.

(B) The Secretary shall give priority to enhanced-use leases that, on the leased property—

(i) provide supportive housing for veterans;

(ii) provide direct services or benefits targeted to veterans; or

(iii) provide services or benefits that indirectly support veterans.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b)(1) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall, at the Secretary's discretion, select the party with whom the lease will be entered into using such selection procedures as the Secretary considers appropriate.

(2) The term of an enhanced-use lease may not exceed 99 years.

(3)(A) For any enhanced-use lease entered into by the Secretary, the lease consideration provided to the Secretary shall consist solely of cash at fair value as determined by the Secretary.

(B) The Secretary shall receive no other type of consideration for an enhanced-use lease besides cash.

(C) The Secretary may enter into an enhanced-use lease without receiving consideration.

(D) The Secretary may not waive or postpone the obligation of a lessee to pay any consideration under an enhanced-use lease, including monthly rent.

(4) The terms of an enhanced-use lease may provide for the Secretary to use minor construction funds for capital contribution payments.

(5) The terms of an enhanced-use lease may not provide for any acquisition, contract, demonstration, exchange, grant, incentive, procurement, sale, other transaction authority, service agreement, use agreement, lease, or lease-back by the Secretary or Federal Government.

(6) The Office of Management and Budget shall review each enhanced-use lease before the lease goes into effect to determine whether the lease is in compliance with paragraph (5).

(c) The entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008, other than an enhanced-use lease under the Los Angeles Homeless Veterans Leasing Act of 2016, shall be considered to be prohibited by such sections unless specifically authorized by law.

(d)(1) Nothing in this subchapter authorizes the Secretary to enter into an enhanced-use lease that provides for, is contingent upon, or otherwise authorizes the Federal Government to guarantee a loan made by a third party to a lessee for purposes of the enhanced-use lease.

(2) Nothing in this subchapter shall be construed to abrogate or constitute a waiver of the sovereign immunity of the United States with respect to any loan, financing, or other financial agreement entered into by the lessee and a third party relating to an enhanced-use lease.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 417; amended Pub. L. 106-117, title II, §208(a), (b), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-95, §10(b), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107-217, §3(j)(5), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-178, §4(i)(1), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 110-161, div. I, title II, §224(c), Dec. 26, 2007, 121 Stat. 2272; Pub. L. 112-154, title II, §211(b)(1), (c)(1), (d), Aug. 6, 2012, 126 Stat. 1180, 1181; Pub. L. 114-58, title VI, §601(25), Sept. 30, 2015, 129 Stat. 539; Pub. L. 114-226, §§2(m)(2)-3(b), Sept. 29, 2016, 130 Stat. 930; Pub. L. 115-182, title II, §212, June 6, 2018, 132 Stat. 1461; Pub. L. 117-168, title VII, §705(a), (b), Aug. 10, 2022, 136 Stat. 1799, 1800.)

## Editorial Notes

## REFERENCES IN TEXT

Section 421(b) of the Veterans' Benefits and Services Act of 1988, referred to in subsecs. (a)(1) and (c), is section 421(b) of Pub. L. 100-322, title IV, May 20, 1988, 102 Stat. 553, which is not classified to the Code.

The date of the enactment of this paragraph, referred to in subsec. (a)(2)(A), is the date of enactment of Pub. L. 117-168, which was approved Aug. 10, 2022.

Section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008, referred to in subsec. (c), is section 224(a) of title II of div. I of Pub. L. 110-161, Dec. 26, 2007, 121 Stat. 2272, which is not classified to the Code.

No act with the title "Los Angeles Homeless Veterans Leasing Act of 2016", referred to in subsec. (c), has been enacted. However, a bill, H.R. 3484, entitled "Los Angeles Homeless Veterans Leasing Act of 2016", was introduced in the House of Representatives on Sept. 10, 2015, during the 114th Congress. That bill contained provisions similar to section 2 of Pub. L. 114-226, Sept. 29, 2016, 130 Stat. 926, known as the "West Los Angeles Leasing Act of 2016". Section 2(m)(2) of Pub. L. 114-226 amended this section; the remainder of section 2 of Pub. L. 114-226 is not classified to the Code.

## AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117-168, § 705(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary may enter into an enhanced-use lease only for the provision of supportive housing and if the lease is not inconsistent with and will not adversely affect the mission of the Department."

Subsec. (b)(2). Pub. L. 117-168, § 705(b), substituted "99 years" for "75 years".

2018—Subsec. (b)(6). Pub. L. 115-182, which directed the general amendment of "section 8162(b)(6)" without specifying the Code title to be amended, was executed by generally amending par. (6) of subsec. (b) of this section, to reflect the probable intent of Congress. Prior to amendment, par. (6) read as follows: "The Secretary may not enter into an enhanced-use lease without certification in advance in writing by the Director of the Office of Management and Budget that such lease complies with the requirements of this subchapter."

2016—Subsec. (b)(3)(D). Pub. L. 114-226, § 3(a), added subpar. (D).

Subsec. (c). Pub. L. 114-226, § 2(m)(2), inserted ", other than an enhanced-use lease under the Los Angeles Homeless Veterans Leasing Act of 2016," before "shall be considered".

Subsec. (d). Pub. L. 114-226, § 3(b), added subsec. (d).

2015—Subsec. (a)(2). Pub. L. 114-58 inserted "if" after "housing and".

2012—Subsec. (a)(2). Pub. L. 112-154, § 211(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary may enter into an enhanced-use lease only if—

"(A) the Secretary determines that—

"(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

"(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

"(iii) the lease will enhance the use of the property; or

"(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located."

Subsec. (b)(1). Pub. L. 112-154, § 211(c)(1)(A), substituted "If the Secretary has determined that a prop-

erty should be leased to another party through an enhanced-use lease, the Secretary shall, at the Secretary's discretion, select the party with whom the lease will be entered into using such selection procedures as the Secretary considers appropriate." for subpars. (A) and (B) which read as follows:

"(A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

"(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title, the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A)."

Subsec. (b)(3). Pub. L. 112-154, § 211(c)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(3)(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

"(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space."

Subsec. (b)(4). Pub. L. 112-154, § 211(c)(1)(C), substituted "Secretary to use minor" for "Secretary to—

"(A) obtain facilities, space, or services on the leased property; and

"(B) use minor".

Subsec. (b)(5), (6). Pub. L. 112-154, § 211(c)(1)(D), added pars. (5) and (6).

Subsec. (c). Pub. L. 112-154, § 211(d), struck out par. (1) designation, substituted "The" for "Subject to paragraph (2), the" and struck out par. (2) which provided conditions under which entering into enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Pub. L. 100-322) would not be considered prohibited under such section.

2007—Subsec. (c)(1). Pub. L. 110-161 inserted "or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008" after "section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553)" and substituted "such sections" for "that section".

2003—Subsec. (a)(3). Pub. L. 108-178 struck out comma after "of title 40".

2002—Subsec. (a)(1). Pub. L. 107-217, § 3(j)(5)(A), substituted "subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40" for "section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)".

Subsec. (a)(3). Pub. L. 107-217, § 3(j)(5)(B), substituted "sections 3141-3144, 3146, and 3147 of title 40" for "the Act of March 3, 1931 (40 U.S.C. 276a et seq.)".

2001—Subsec. (b)(1). Pub. L. 107-95 designated existing provisions as subpar. (A) and added subpar. (B).

2000—Subsec. (a)(4). Pub. L. 106-400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

1999—Subsec. (a)(2). Pub. L. 106-117, § 208(a), inserted subpar. (A) designation before "the Secretary", redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, and realigned the margins, substituted "; or" for period at end of cl. (iii), and added subpar. (B).

Subsec. (b)(2). Pub. L. 106-117, § 208(b)(1), substituted "may not exceed 75 years." for "may not exceed—"

"(A) 35 years, in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

“(B) 20 years, in the case of a lease not described in subparagraph (A).”

Subsec. (b)(4). Pub. L. 106-117, §208(b)(2), added par. (4) and struck out former par. (4) which read as follows: “Any payment by the Secretary for the use of space or services by the Department on property that has been leased under this subchapter may only be made from funds appropriated to the Department for the activity that uses the space or services. No other such payment may be made by the Secretary to a lessee under an enhanced-use lease unless the authority to make the payment is provided in advance in an appropriation Act.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title II, §211(b)(2), Aug. 6, 2012, 126 Stat. 1180, provided that:

“(A) IN GENERAL.—Paragraph (2) of section 8162(a) of title 38, United States Code, as amended by paragraph (1), shall take effect on January 1, 2012, and shall apply with respect to enhanced-use leases entered into on or after such date.

“(B) PREVIOUS LEASES.—Any enhanced-use lease that the Secretary has entered into prior to the date described in subparagraph (A) shall be subject to the provisions of subchapter V of chapter 81 of such title, as in effect on the day before the date of the enactment of this Act [Aug. 6, 2012].”

Pub. L. 112-154, title II, §211(c)(2), Aug. 6, 2012, 126 Stat. 1181, provided that: “Paragraph (3) of section 8162(b), as amended by paragraph (1)(B) of this subsection, shall take effect on January 1, 2012, and shall apply with respect to enhanced-use leases entered into on or after such date.”

##### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. I, title II, §224(d), Dec. 26, 2007, 121 Stat. 2272, provided that: “This section [amending this section], including the amendment made by this section, shall apply with respect to fiscal year 2008 and each fiscal year thereafter.”

##### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

##### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-95, §10(c), Dec. 21, 2001, 115 Stat. 920, provided that: “The amendments made by subsection (b) [amending this section] shall apply to leases entered into on or after the date of the enactment of this Act [Dec. 21, 2001].”

#### § 8163. Hearing and notice requirements regarding proposed leases

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on—

- (1) local commerce and other aspects of the local community;
- (2) programs administered by the Department; and
- (3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing. The notice shall include the following:

- (1) The time and place of the hearing.
- (2) Identification of the property proposed to be leased.
- (3) A description of the proposed uses of the property under the lease.
- (4) A description of how the uses to be made of the property under a lease of the general character then contemplated—

(A) would—

- (i) contribute in a cost-effective manner to the mission of the Department;
- (ii) not be inconsistent with the mission of the Department;
- (iii) not adversely affect the mission of the Department; and
- (iv) affect services to veterans; or

(B) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(5) A description of how those uses would affect services to veterans.

(c)(1) If after a hearing under subsection (a) the Secretary intends to enter into an enhanced-use lease of the property involved, the Secretary shall notify the congressional veterans' affairs committees, the Committees on Appropriations of the House of Representatives and the Senate, and the Committees on the Budget of the House of Representatives and the Senate of the Secretary's intention to enter into such lease, shall publish a notice of such intention in the Federal Register, and shall submit to the congressional veterans' affairs committees a copy of the proposed lease. With respect to a major enhanced-use lease, upon the request of the congressional veterans' affairs committees, not later than 30 days after the date of such notice, the Secretary shall testify before the committees on the major enhanced-use lease, including with respect to the status of the lease, the cost, and the plans to carry out the activities under the lease. The Secretary may not delegate such testifying below the level of the head of the Office of Asset Enterprise Management of the Department or any successor to such office.

(2) The Secretary may not enter into an enhanced use lease until the end of the 45-day period beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A description of the provisions of the proposed lease.

(E) A description of how the proposed lease—