

**CHAPTER 110 -AGRICULTURE PROPERTY MANAGEMENT REGULATIONS  
SUBCHAPTER C - REAL PROPERTY  
PART 110-75 – REAL PROPERTY DISPOSAL**

**SUPPLEMENTING**

**CHAPTER 102 - FEDERAL MANAGEMENT REGULATION  
SUBCHAPTER C – REAL PROPERTY  
PART 102-75 – REAL PROPERTY DISPOSAL**

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[102-75.1065](#)

When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?

[102-75.1070](#)

Can this delegation of authority to the Secretary of Defense be redelegated?

### **Delegation to the Department of Agriculture (USDA)**

[102-75.1075](#)

What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?

[102-75.1080](#)

What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

[102-75.1085](#)

When using a delegation of real property disposal authority under this subpart, is USDA required to report excess property to GSA?

[102-75.1090](#)

Can this delegation of authority to the Secretary of Agriculture be redelegated?

[110-75.1090](#)

**Delegation to the USDA.**

### **Delegation to the Department of the Interior**

[102-75.1095](#)

What is the policy governing delegations of authority to the Secretary of the Interior?

[102-75.1100](#)

Can this delegation of authority to the Secretary of the Interior be redelegated?

[102-75.1105](#)

What other responsibilities does the Secretary of the Interior have under this delegation of authority?

### **Native American-Related Delegations**

[102-75.1110](#)

What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?

[102-75.1115](#)

Are there any limitations or restrictions on this delegation of authority?

[102-75.1120](#)

Does the property have to be Federally screened?

[102-75.1125](#)

Can the transfer/retransfer under this delegation be at no cost or without consideration?

[102-75.1130](#)

What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?

[102-75.1135](#)

May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

**Subpart G - Conditional Gifts of Real Property to Further the Defense Effort**

- [102-75.1140](#) What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?
- [102-75.1145](#) What action must the Federal agency receiving an offer of a conditional gift take?
- [102-75.1150](#) What happens to the gift if GSA determines it to be acceptable?
- [102-75.1155](#) May an acceptable gift of property be converted to money?

**Subpart H - Use of Federal Real Property to Assist the Homeless**

**Definitions**

- [102-75.1160](#) What definitions apply to this subpart?

**Applicability**

- [102-75.1165](#) What is the applicability of this subpart?

**Collecting the Information**

- [102-75.1170](#) How will information be collected?

**Suitability Determination**

- [102-75.1175](#) Who issues the suitability determination?

**Real Property Reported Excess to GSA**

- [102-75.1180](#) For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

**Suitability Criteria**

- [102-75.1185](#) What are suitability criteria?

**Determination of Availability**

- [102-75.1190](#) What is the policy concerning determination of availability statements?

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**Public Notice of Determination**

- [102-75.1195](#) What is the policy concerning making public the notice of determination?

### **Application Process**

[102-75.1200](#) How may representatives of the homeless apply for the use of properties to assist the homeless?

### **Action on Approved Applications**

[102-75.1205](#) What action must be taken on approved applications?

### **Unsuitable Properties**

[102-75.1210](#) What action must be taken on properties determined unsuitable for homeless assistance?

### **No Applications Approved**

[102-75.1215](#) What action must be taken if there is no expression of interest?

### **Subpart I - Screening of Federal Real Property**

[102-75.1220](#) How do landholding agencies find out if excess Federal real property is available?

[102-75.1225](#) What details are provided in the “Notice of Availability”?

[102-75.1230](#) How long does an agency have to indicate its interest in the property?

[102-75.1235](#) Where should an agency send its written response to the “Notice of Availability”?

[102-75.1240](#) Who, from the interested landholding agency, should submit the written response to GSA’s “Notice of Availability”?

[102-75.1245](#) What happens after the landholding agency properly responds to a “Notice of Availability”?

[102-75.1250](#) What if the agency is not quite sure it wants the property and needs more time to decide?

[102-75.1255](#) What happens when more than one agency has a valid interest in the property?

[102-75.1260](#) Does GSA conduct Federal screening on every property reported as excess real property?

[102-75.1265](#) Are extensions granted to the Federal screening and response timeframes?

[102-75.1270](#) How does an agency request a transfer of Federal real property?

[102-75.1275](#) Does a requesting agency have to pay for excess real property?

[102-75.1280](#) What happens if the property has already been declared surplus and an agency discovers a need for it?

[102-75.1285](#) How does GSA transfer excess real property to the requesting agency?

[102-75.1290](#) What happens if the landholding agency requesting the property does not promptly accept custody and accountability?

## Subpart A - General Provisions

### 102-75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. Federal agencies with authority to dispose of real property under Subchapter III of Chapter 5 of Title 40 of the United States Code will be referred to as "disposal agencies" in this part. Except in rare instances where GSA delegates disposal authority to a Federal agency, the "disposal agency" as used in this part refers to GSA.

### 110-75.5 Scope of this Part.

This part supplements the Federal Management Regulations for the US Department of Agriculture (USDA) which provides USDA Department-wide policy for real property disposal.

### 102-75.10 What basic real property disposal policy governs disposal agencies?

Disposal agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must survey the real property under their custody or control to identify property that is not utilized, underutilized, or not being put to optimum use. Disposal agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

### 110-75.10 Basic Real Property Disposal Policy.

In accordance with Executive Order (EO) 13327 and the annual Federal Real Property Council's Guidance for Real Property Inventory Reporting, USDA has increased accountability of assets targeted for disposal and established clearer goals and objectives regarding the tracking of disposition data. Furthermore, each agency is responsible for complying with all laws, regulations, Presidential Memorandums and other legal requirements governing the disposal of real property.

**Below are relevant E.O.s, Laws, and Memoranda that apply to Federal real property: Executive Order 13327 and are available at:**

<http://www.gsa.gov/portal/content/101584>

Presidential Memorandum dated June 10, 2010 available at:

<http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate>

The Office of Procurement and Property Management (OPPM), is responsible for continually surveying the Department's its real property to determine that only

those properties necessary to the agency's mission are retained and that prompt disposal is made of properties no longer needed for the Department's mission.

USDA has established an Asset Management Plan which includes Building Block Plans and Three Year Timeline that, among other initiatives, highlights planned disposals and properties suitable for reinvestments or disposal. Rightsizing of the USDA real property is an integral part of USDA's accountability process.

### **Real Property Disposal Services**

#### **102-75.15 What real property disposal services must agencies provide under a delegation of authority from GSA?**

Disposal agencies must provide real property disposal services for real property assets under their custody and control, such as the utilization of excess property, surveys, and the disposal of surplus property, which includes public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

#### **110-75.15 USDA Delegation of Authority**

The Administrator of GSA has granted the Secretary of Agriculture the authority to dispose of such property by any means they deem appropriate and advantageous to the United States in accordance with [41 CFR 102-75.1075/FMR 102-75.1075](#).

#### **102-75.20 How can Federal agencies with independent disposal authority obtain related disposal services?**

Federal agencies with independent disposal authority are encouraged to obtain utilization, disposal, and related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that they can remain focused on their core mission.

### **Subpart B - Utilization of Excess Real Property**

#### **102-75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?**

Landholding agencies' responsibilities concerning the utilization of excess property are to—

- (a) Achieve maximum use of their real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;
- (b) Increase the identification and reporting of their excess real property; and
- (c) Fulfill its needs for real property, so far as practicable, by utilization of real property determined excess by other agencies, pursuant to the provision of this part, before it purchases non-Federal real property.

## **110-75.25 USDA Excess Real Property Responsibilities**

USDA provides the policies and procedures for the utilization of excess real property. Property held by this Department must be fully utilized and adequately maintained. Property no longer required must be promptly reported as excess to OPPM or otherwise disposed of as authorized by law.

### **102-75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?**

Disposal agencies' responsibilities concerning the utilization of excess property are to—

- (a) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia; and
- (b) Resolve conflicting requests for transferring real property that the involved agencies cannot resolve.

### **102-75.35 [Reserved]**

## **Standards**

### **102-75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?**

Each Executive agency must identify unneeded Federal property using the following standards:

- (a) Not utilized.
- (b) Underutilized.
- (c) Not being put to optimum use.

### **102-75.45 What does the term “Not utilized” mean?**

“Not utilized” means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable Executive agency, or occupied in caretaker status only.

### **102-75.50 What does the term “Underutilized” mean?**

“Underutilized” means an entire property or portion thereof, with or without improvements, which is used—

- (a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or

(b) For current program purposes that can be satisfied with only a portion of the property.

**102-75.55 What does the term “Not being put to optimum use” mean?**

“Not being put to optimum use” means an entire property or portion thereof, with or without improvements, which—

(a) Even though used for current program purposes, the nature, value, or location of the property is such that it could be utilized for a different and significantly higher and better purpose; or

(b) The costs of occupying are substantially higher than other suitable properties that could be made available through transfer, purchase, or lease with total net savings to the Government, after considering property values, costs of moving, occupancy, operational efficiency, environmental effects, regional planning, and employee morale.

**Guidelines**

**102-75.60 What are landholding agencies’ responsibilities concerning real property surveys?**

A landholding agency’s responsibilities concerning real property utilization surveys are to—

(a) Survey real property under its control (i.e., property reported on its financial statements) at least annually to identify property that is not utilized, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency’s needs and the property’s location. In conducting annual reviews of their property holdings, the GSA Customer Guide to Real Property Disposal can provide guidelines for Executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

**110-75.60 Landholding agencies responsibilities.**

(1) Each agency shall survey its real property annually and report to OPPM. (See 102-75.60), in accordance with [AGPMR 110-51.106](#), and [AGPMR Advisory 13-03](#)

(2) Each agency shall, so far as practicable, fulfill its needs for real property by the utilization of excess property. (See 110-75.25)

(3) Each agency shall notify OPPM of its real property declared as excess after internal screening. A copy of the announcement for screening agency-wide is to be submitted in the documents submitted to OPPM.

(a) Such excess property shall be identified on the USDA the Three Year Rolling Timeline.

(b) The properties are to be declared as Existing Excess in the Corporate Property Automated Information Property System (CPAIS). This system is the electronic system of record used to record, measure, and tract real property.

(4) Before requesting transfer of excess real property, each agency shall notify OPPM. OPPM shall screen the holdings of other USDA agencies to determine whether new requirements can be met through utilization of Agriculture real property in accordance with Departmental Reassignment. (See 110-75.80; 102-75.80)

**102-75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?**

It is important that each Executive agency notify the disposal agency of its real property needs to determine whether the excess or surplus property of another agency is available that would meet its need and prevent the unnecessary purchase or lease of real property.

**102-75.70 Are there any exceptions to this notification policy?**

Yes, Executive agencies are not required to notify the disposal agency when an agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics that limit the possible use of other available property. For example, Executive agencies are not required to notify disposal agencies concerning the acquisition of real property for a dam site, reservoir area, or the construction of a generating plant or a substation, since specific lands are needed, which limit the possible use of other available property. Therefore, no useful purpose would be served by notifying the disposal agency.

**102-75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?**

In every case of a proposed transfer of excess real property, the most important consideration is the validity and appropriateness of the requirement upon which the proposal is based. Also, a proposed transfer must not establish a new program that has never been reflected in any previous budget submission or congressional action. Additionally, a proposed transfer must not substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(Note: See Subpart I—Screening of Excess Federal Real Property (102-75.1220 through 102-75.1290) for information on screening and transfer requests.)

**102-75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?**

Before requesting a transfer of excess real property, an Executive agency must—

(a) Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;

(b) Review all real property under its accountability that has been permitted or outleased and terminate the permit or lease for any property, or portion thereof, suitable for the proposed need, if termination is not prohibited by the terms of the permit or lease;

(c) Utilize property that is or can be made available under 102-75.80(a) or (b) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;

(d) Confirm that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property that would be suitable for the intended purpose;

(e) Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and

(f) Consider the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

### **110-75.80 Reassignment of real property among USDA agencies.**

Prior to initiating any actions to acquire excess real property from other sources, USDA agencies shall determine whether new requirements for property can be met by improved utilization of their existing property or reassignment of other Departmental property.

(1) Land and buildings. OPPM shall approve and reassign land and appurtenant structures and facilities between the agencies of the Department. Reassignment may be made without exchange of funds, except that reimbursement may be required for book value of real property under custody of the Commodity Credit Corporation. Request for reassignment shall include, supporting justification and reassignment of such real property shall be submitted through the Director of the requesting agency to OPPM.

(2) Buildings and structures without land. Buildings or structures may be reassigned between agencies, without reimbursement, by agreement of the agencies.

(3) Permits. Property not immediately needed by a Departmental agency and not excess may be used by other Government agencies outside the Department of USDA. Permitted use by Public agencies requires the approval of GSA.

(4) All custody and control reassignments shall be reflected in the USDA's CPAIS, the electronic real property inventory system and supporting documentation maintained by both the receiving and conveying agencies' files.

**102-75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?**

Yes, but only on a temporary basis with the condition that the property will be released for further Federal utilization or disposal as surplus property at an agreed upon time when the transfer is arranged.

**102-75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?**

GSA may temporarily assign or direct the use of such excess real property to the requesting agency. See 102-75.240.

**102-75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?**

Yes, GSA can authorize the use of excess real property for an approved program. See 102-75.240.

**Land Withdrawn or Reserved From the Public Domain**

**102-75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?**

An agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA Regional Office a Report of Excess Real Property (Standard Form 118), with appropriate Schedules A, B, and C, only when—

(a) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR part 2372 et seq.) and sent a copy of the notice to the appropriate GSA Regional Office;

(b) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(c) The Department of the Interior provides a report identifying whether or not any other agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

**110-75.100 USDA Land Withdrawn from the Public Domain.**

Agencies holding withdrawn or reserved public domain land that is no longer needed for agency programs, except land reserved or dedicated for National Forests, shall send the following to OPPM:

- (1) An informational copy of the notice of intention to relinquish shall be filed with the Bureau of Land Management (BLM), Department of the Interior (DOI) (43 CFR 2372).
- (2) Notification of the determination made by the (BLM), DOI. 110-75.115 prescribes the procedure for reporting land excess.

**102-75.105      What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?**

In such cases, the Department of the Interior must—

- (a) Notify the appropriate GSA Regional Office of such a determination; and
- (b) Authorize the landholding agency to identify in the Standard Form 118 any minerals in the land that the Department of the Interior determines to be unsuitable for disposition under the public land mining and mineral leasing laws.

### **Transfers Under Other Laws**

**102-75.110      Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?**

Yes, the provisions of this section shall not apply to transfers of real property authorized to be made by 40 U.S.C. 113(e) or by any special statute that directs or requires an Executive agency to transfer or convey specifically described real property in accordance with the provisions of that statute. Transfers of real property must be made only under the authority of Title 40 of the United States Code, unless the independent authority granted to such agency specifically exempts the authority from the requirements of Title 40.

### **Reporting of Excess Real Property**

**102-75.115      Must reports of excess real property and related personal property be prepared on specific forms?**

Yes, landholding agencies must prepare reports of excess real property and related personal property on—

- (a) Standard Form 118, Report of Excess Real Property, and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A;
- (b) Standard Form 118b, Land, Schedule B; and
- (c) Standard Form 118c, Related Personal Property, Schedule C.

### **110-75.115-5000 Reporting USDA Excess Real Property**

Disposal agencies shall report to OPPM all reportable excess real property for which they have disposal authority.

No action shall be taken that may diminish the value of the property which the agency will report as excess without prior consultation with the appropriate GSA Regional Office and OPPM.

Excess related personal property shall be reported to the Departmental Excess Personal Property Coordinator (DEPPC) or the Centralized Excess Property Operations (CEPO) in accordance with 110-36.30 and 110-36-35. Excepted from the procedure is that excess related personal property which, if removed, would impair or prevent the continued use of the property for which it was originally intended, i.e., research laboratories. Reports of excess real property made through OPPM shall indicate whether the related personal has been reported to the DEPPC or CEPO.

Upon review and approval of OPPM, the Disposal Package will be forwarded to the appropriate GSA Regional Office. OPPM will advise the agency contact when the Disposal Package is submitted and accepted by GSA; the agency contact shall be responsible for ensuring the status of the property (ies) is (are) updated within CPAIS.

### **110-75.115-5010 Submission of Reports**

A completed Disposal Package is to be submitted to OPPM, to the attention of the Chief of PMD. Furthermore, the completed Disposal Package must be reviewed and approved by the Chief of PMD, the Environmental Management Division (EMD) and approved by the Director of OPPM.

Disposal Packages required by OPPM shall be submitted using the format outlined in the Excess Real Property Checklist, available on the OPPM/PMD SharePoint site:  
<https://portal.usda.gov/sites/PMD/RPDISPOSAL/Lists/Announcements/AllItems.aspx>

The entire Disposal Package is to be transmitted as two hard copy originals and one electronic copy to OPPM. Electronic media shall be saved to disk and submitted.

When submitting hard copies, do so in binders. Each attachment should be separated by a TAB indicating its section. One copy of the Disposal Package will be retained in OPPM indefinitely. The other copy will be provided to the General Services Administration.

### **110-75.115-5015 Real Property Excepted from Reporting**

- (a) Real property excepted from reporting by 110-75.1090 shall be screened for need within the Department and with other Federal agencies prior to disposal.
- (b) Where a legitimate need exists to salvage an entire parcel of real property for agency use, such property is not to be considered as excess and need not be reported prior to undertaking salvage operations.

### **110-75.115-5020 Screening of Excess Property**

Notice of firm or tentative requirements for excess land and related improvements identified from GSA Notices of Availability shall be submitted to the appropriate GSA Regional Office through OPPM. All other requirements may be submitted directly to GSA.

### **110-75.115-5025 Withdrawals**

SF 118, 118a, 118b and 118c shall be used to request withdrawals of real property from excess, in whole or in part or otherwise amend reports of excess real property. Requests for withdrawals shall be accompanied by an appropriate justification and transmitted to OPPM. OPPM will forward the request upon review and approval to the appropriate GSA Regional Office.

### **102-75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?**

Yes, in all cases where Government-owned land is reported excess, Executive agencies must include a title report, prepared or approved by a qualified employee of the landholding agency, documenting the Government's title to the property.

#### **Title Report**

### **102-75.125 What information must agencies include in the title report?**

When completing the title report, agencies must include—

- (a) The description of the property;
- (b) The date title vested in the United States;
- (c) All exceptions, reservations, conditions, and restrictions, relating to the title;
- (d) Detailed information concerning any action, thing, or circumstance that occurred from the date the United States acquired the property to the date of the report that in any way affected or may have affected the United States' right, title, or interest in and to the real property (including copies of legal comments or opinions discussing the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect must be made a part of the report;

- (e) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect must be made a part of the report;
- (f) Detailed information regarding any known flood hazards or flooding of the property, and, if the property is located in a flood-plain or on wetlands, a listing of restricted uses (along with the citations) identified in Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977;
- (g) The specific identification and description of fixtures and related personal property that have possible historic or artistic value;
- (h) The historical significance of the property and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property listed in the National Register. If the landholding agency is aware of any effort by the public to have the property listed in the National Register, it must also include this information;
- (i) A description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fire-proofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. Agencies must also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property that is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499);
- (j) A statement indicating whether or not lead-based paint is present on the property. Additionally, if the property is target housing (all housing except housing for the elderly or persons with disabilities or any zero bedroom dwelling) constructed prior to 1978, provide a risk assessment and paint inspection report that details all lead-based paint hazards; and
- (k) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the U.S. Environmental Protection Agency (EPA) at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property must review the regulations issued by EPA at 40 CFR part 373 for details on the information required and must comply with these requirements. In addition, agencies reporting such property shall review and comply with the regulations for the utilization and disposal of hazardous materials and certain categories of property set forth at 41 CFR part 101-42.

**110-75.125 Title Report (report forms). Report forms shall be prepared as follows:**

- (a) In all cases where Government owned land is reported, a report on the Government's title shall be attached to the SF-118 and all copies of the report. The report shall contain a response to each requirement contained in FMR 102-75.125.

Check applicable items and provide the required documentation. The report shall be dated and signed by a qualified agency official.

(b) The Office of the General Counsel shall be consulted whenever doubt exists as to the status of the Government's title.

(1) The land description shall be suitable for conveyance of the property involved. If necessary, a survey and legal description shall be performed.

(2) When excess land is in a floodplain or wetland as defined in Executive Orders 11988 and 11990, respectively, agencies shall be guided by Departmental Regulation 9500-3, Land Use Policy.  
<http://www.ocio.usda.gov/sites/default/files/docs/2012/DR9500-003.htm>

(3) Agencies shall state, as a minimum, whether the property does or does not meet the criteria set forth in the National Historic Preservation Act of 1966, Executive Order 11593, and the Advisory Council on Historic Preservation Guideline (39 FR 3366, January 25, 1974), and if appropriate, what action has been taken towards having the property nominated for inclusion in the National Register. The statement shall include information as to whether the property is in proximity to other property on the National Register.

(4) Complete information regarding the known existence of endangered species, as defined by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 Et Seq.) shall be made part of the title report. (See Departmental Regulation 9500-4).

(5) If it is not practical to submit the abstract and related title data with the report of excess, list contact and location where documents are on file.

(6) Complete information with regard to hazardous waste activities on the property. Agencies shall be guided by 41 CFR 102-75.130 and [DM 5600-005](#) Chapter XIV

**102-75.130 If hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If hazardous substance activity took place on the property, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. The reporting agency must also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such hazardous substance activity was taken before the date the property was reported excess. If such action was not taken, the reporting agency must advise the disposal agency when such action will be completed or how the agency expects to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the disposal. See §§102-75.340 and 102-75.345.

**102-75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If no hazardous substance activity took place, the reporting agency must include the following statement:

The (reporting agency) has determined, in accordance with regulations issued by EPA at 40 CFR part 373, that there is no evidence indicating that hazardous substance activity took place on the property during the time the property was owned by the United States.

**Other Necessary Information**

**102-75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?**

Executive agencies must provide—

- (a) A legible, reproducible copy of all instruments in possession of the agency that affect the United States' right, title, or interest in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). If it is impracticable to transmit the abstracts of title and related title evidence, agencies must provide the name and address of the custodian of such documents in the title report referred to in 102-75.120;
- (b) Any appraisal reports indicating or providing the fair market value or the fair annual rental of the property, if requested by the disposal agency; and
- (c) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by EPA under 40 CFR part 761, if requested by the disposal agency. If the property does contain any equipment subject to EPA regulation under 40 CFR part 761, the certification must include the landholding agency's assurance that each piece of equipment is now and will continue to be in compliance with the EPA regulations until disposal of the property.

**Examination for Acceptability**

**102-75.145 Is GSA required to review each report of excess?**

Yes, GSA must review each report of excess to ascertain whether the report was prepared according to the provisions of this part. GSA must notify the landholding agency, in writing, whether the report is acceptable or other information is needed within 15 calendar days after receipt of the report.

**102-75.150            What happens when GSA determines that the report of excess is adequate?**

When GSA determines that a report is adequate, GSA will accept the report and inform the landholding agency of the acceptance date. However, the landholding agency must, upon request, promptly furnish any additional information or documents relating to the property required by GSA to accomplish a transfer or a disposal.

**102-75.155            What happens if GSA determines that the report of excess is insufficient?**

Where GSA determines that a report is insufficient, GSA will return the report and inform the landholding agency of the facts and circumstances that make the report insufficient. The landholding agency must promptly take appropriate action to submit an acceptable report to GSA. If the landholding agency is unable to submit an acceptable report, the property will no longer be considered as excess property and the disposal agency will cease activity for the disposal of the property. However, GSA may accept the report of excess on a conditional basis and identify what deficiencies in the report must be corrected in order for the report to gain full acceptance.

**Designation as Personal Property**

**102-75.160            Should prefabricated movable structures be designated real or personal property for disposition purposes?**

Prefabricated movable structures such as Butler-type storage warehouses, Quonset huts, and house trailers (with or without undercarriages) reported to GSA along with the land on which they are located may, at GSA's discretion, be designated for disposition as personal property for off-site use or as real property for disposal with the land.

**102-75.165            Should related personal property be designated real or personal property for disposition purposes?**

Related personal property may, at the disposal agency's discretion, be designated as personal property for disposal purposes. However, for fine artwork and sculptures, GSA's policy is that artwork specifically created for a Federal building is considered as a fixture of the building. This also applies to sculptures created for a Federal building or a public park. Disposal agencies must follow the policies and guidance for disposal of artwork and sculptures developed by the GSA Office of the Chief Architect, Center for Design Excellence and the Arts, and the Bulletin dated March 26, 1934, entitled "Legal Title to Works Produced under the Public Works of Art Project.

**102-75.170 What happens to the related personal property in a structure scheduled for demolition?**

When a structure is to be demolished, any fixtures or related personal property therein may, at the disposal agency's discretion, be designated for disposition as personal property where a ready disposition can be made of these items. As indicated in 102-75.165, particular consideration should be given to designating items having possible historical or artistic value as personal property.

**Transfers**

**102-75.175 What are GSA's responsibilities regarding transfer requests?**

Before property can be transferred among Federal agencies, to mixed- ownership Government corporations, and to the municipal government of the District of Columbia, GSA must determine that—

- (a) The transfer is in the best interest of the Government;
- (b) The requesting agency is the appropriate agency to hold the property; and
- (c) The proposed land use will maximize use of the real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property.

(Note: See Subpart I—Screening of Excess Federal Real Property (102-75.1220 through 102-75.1290) for information on screening and transfer requests.)

**110-75.175 USDA transfer requests.**

- (a) Transfers from other Federal agencies. (See 110-75.175(c) (<http://www.gpo.gov/fdsys/granule/CFR-2003-title41-vol3/CFR-2003-title41-vol3-sec102-75-185/content-detail.html>) for transfers without reimbursement.)
  - (1) Land with or without improvements. Requests for transfer of excess land, with or without improvements, shall be submitted, through OPPM.
  - (2) Improvements without land. Agencies may negotiate for and conclude transfers of improvements without land directly from the GSA or other Federal agencies.
- (b) Transfers to other Federal agencies. (See 110-75.175 for transfers without reimbursement).
  - (1) Land with or without improvements. Transfers of excess land, with or without improvements, will be made by OPPM.
  - (2) Improvements without land. Agencies may transfer excess improvements to other Federal agencies. Such transfers shall be made as authorized by GSA, if applicable. (See 102-75.185.)
- (c) Transfers without reimbursement. All requests for transfer without reimbursement shall be accompanied by the certification required by 102-75-210. The certification shall be signed by the head of the requesting agency.
- (3) Reports must include documentation referencing any hazardous waste activities on the property. A Phase 1 Environmental Site Assessment should be conducted when no previous information is available concerning the environmental condition of a

property. (See [DR 5600-1](#), Chapter XIV, Environmental Compliance for Real Property Acquisition or Disposal.)

**102-75.180 May landholding agencies transfer excess real property without notifying GSA?**

Landholding agencies may, without notifying GSA, transfer excess real property that they use, occupy, or control under a lease, permit, license, easement, or similar instrument when—

- (a) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;
- (b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy; or
- (c) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet.

**102-75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?**

In those instances, landholding agencies must transfer property following the policies in this subpart.

**102-75.190 What amount must the transferee agency pay for the transfer of excess real property?**

The transferee agency must pay an amount equal to the property's fair market value (determined by the Administrator)—

- (a) Where the transferor agency has requested the net proceeds of the transfer pursuant to 40 U.S.C. 574; or
- (b) Where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841), is a mixed-ownership Government corporation, or the municipal government of the District of Columbia.

**102-75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?**

As may be agreed upon by GSA and the corporation, the transferee agency must pay an amount equal to—

- (a) The estimated fair market value of the property; or
- (b) The corporation's book value of the property.

**102-75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?**

Where the transfer is for the purpose of upgrading facilities (i.e., for the purpose of replacing other property of the transferee agency, which because of the location, nature, or condition thereof, is less efficient for use), the transferee must pay an amount equal to the difference between the fair market value of the property to be replaced and the fair market value of the property requested, as determined by the Administrator.

**102-75.205 Are transfers ever made without reimbursement by the transferee agency?**

Transfers may be made without reimbursement by the transferee agency only if—  
(a) Congress has specifically authorized the transfer without reimbursement, or  
(b) The Administrator, with the approval of the Director of the Office of Management and Budget (OMB), has approved a request for an exception from the 100 percent reimbursement requirement.

**102-75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?**

The request must include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12512, Federal Real Property Management, dated April 29, 1985. The transferee agency must attach the explanation to the Request for Transfer of Excess Real and Related Personal Property (GSA Form 1334) prior to submitting the form to GSA. The unavailability of funds alone is not sufficient to justify an exception.

**110-75.210 Additional Instructions for the preparation of request for transfer of excess real and related personal property.**

Agencies shall submit an original and 1 copy of the GSA Form 1334 (<http://www.gsa.gov/portal/forms/download/113986>) and attachments to OPPM.

Agencies shall also provide the following information on a separate transmittal for Departmental use only.

1. Will acquisition of the land entail investments in buildings, facilities or other improvements? Explain.
2. Are improvements necessary before property can be utilized?
3. Are improvements a budgeted line item? If so, furnish details of budget request.
4. Is justification based in whole or in part on future use as projected by long range plans? If so, identify its priority in the long range plans and outline interim use of the property. If no interim use is planned, explain.
5. Have all costs of ownership been considered and compared with alternatives? Explain.
6. The FMV of the real property for transfer. If unknown, an estimate of the FMV will suffice.

### Specific Instructions

Block 2 – 5 Leave blank

Block 10 Leave blank. OPPM will make the required certification based on the signed transmittal memorandum from the agency.

Block 11 Attach statement of justification covering all of the data requested by GSA and in the format shown.

### Other instructions

1. Indicate the response received from state and area-wide clearing houses and local elected officials.
2. Agencies shall ascertain whether the property requested or property in the immediate vicinity of the property requested has historical significance and evaluate the effects of the proposed program will have on the property. (See 7 CFR 3100, Subpart C.)

#### **102-75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?**

Agency heads must endorse requests for exceptions to the 100 percent reimbursement requirement.

#### **102-75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?**

Agencies must submit all requests for exception from the 100 percent reimbursement requirement to the appropriate GSA regional property disposal office.

#### **110-75.220 Requests for exception from the 100 percent reimbursement shall be submitted to OPPM.**

#### **102-75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?**

The Administrator must review all requests for exception from the 100 percent reimbursement requirement. If the Administrator approves the request, it is then submitted to OMB for final concurrence. If OMB approves the request, then GSA may complete the transfer.

#### **102-75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?**

The agency requesting the property will assume responsibility for protection and maintenance costs not more than 40 days from the date of the Administrator's

letter to OMB requesting concurrence for an exception to the 100 percent reimbursement requirement. If the request is denied, the requesting agency may pay the fair market value for the property or withdraw its request. If the request is withdrawn, responsibility for protection and maintenance cost will return to the landholding agency at that time.

**102-75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?**

Yes, disposal agencies may transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction, pursuant to the provisions of 40 U.S.C. 113(d). The amount of reimbursement for such transfer must be the same as would be required for a transfer of excess property to an Executive agency under similar circumstances.

**Temporary Utilization**

**102-75.240 May excess real property be temporarily assigned/reassigned?**

Yes, whenever GSA determines that it is more advantageous to assign property temporarily rather than permanently, it may do so. If the space is for office, storage, or related facilities, GSA will determine the length of the assignment/reassignment. Agencies are required to reimburse the landholding agency (or GSA, if GSA has become responsible for seeking an appropriation for protection and maintenance expenses) (see 102-75.970) for protection and maintenance expenses. GSA may also temporarily assign/reassign excess real property for uses other than storage, office or related facilities. In such cases, the agency receiving the temporary assignment may be required to pay a rental or users charge based upon the fair market value of the property, as determined by GSA. If the property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at an agreed upon time (see 102-75.85). The requesting agency is responsible for protection and maintenance expenses.

**Non-Federal Interim Use of Excess Property**

**102-75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?**

Landholding agencies, upon approval from GSA, may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency and when the interim use will not impair the ability to dispose of the property.

**Subpart C - Surplus Real Property Disposal**

**102-75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?**

The disposal agency must dispose of surplus real property—

- (a) In the most economical manner consistent with the best interests of the Government; and
- (b) Ordinarily for cash, consistent with the best interests of the Government.

**102-75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?**

The disposal agency must determine that there is no further Federal need or requirement for the excess real property and the property is surplus to the needs of the Federal Government. After reaching this determination, the disposal agency must expeditiously make the surplus property available for acquisition by State and local governmental units and non-profit institutions (see 102-75.350) or for sale by public advertising, negotiation, or other disposal action. The disposal agency must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. Where hazardous substance activity is identified, see 102-75.340 and 102-75.345 for required information that the disposal agency must incorporate into the offer to purchase and conveyance document.

**102-75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?**

The disposal agency may dispose of surplus real property by exchange for privately owned property for property management considerations such as boundary realignment or for providing access. The disposal agency may also dispose of surplus real property by exchange for privately owned property where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

**110-75.260 Exchanges involving USDA surplus real property.**

Agencies requests to the GSA to acquire privately owned real property, through exchange of surplus Federal real property, shall be made through OPPM. The request shall include:

- (a) Approvals of the Committees on Agriculture of the Senate and House of Representatives and the Office of Management and Budget.
- (b) A description of the property to be acquired and an explanation of improvements, if any.
- (c) The record of ownership of the property.
- (d) The appraised market value of the property.

(e) Purpose of the exchange, the authority thereof and the program the exchange will support. A statement regarding the economic or unique program advantages of acquiring the property by this method shall be included. (See 110-73.255.5005.3) for exchanges requiring Departmental approval).

**102-75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?**

Yes, conveyance documents must identify all agreements and representations concerning restrictions and conditions affecting the property's future use, maintenance, or transfer.

**Applicability of Antitrust Laws**

**102-75.270 Must antitrust laws be considered when disposing of property?**

Yes, antitrust laws must be considered in any case in which there is contemplated a disposal to any private interest of—

- (a) Real and related personal property that has an estimated fair market value of \$3 million or more; or
- (b) Patents, processes, techniques, or inventions, irrespective of cost.

**102-75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?**

The Attorney General determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws.

**102-75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?**

The disposal agency must promptly provide the Attorney General with notice of any such proposed disposal and the probable terms or conditions, as required by 40 U.S.C. 559. If notice is given by any disposal agency other than GSA, a copy of the notice must also be provided simultaneously to the GSA Regional Office in which the property is located. Upon request, a disposal agency must furnish information that the Attorney General believes to be necessary in determining whether the proposed disposition or any other disposition of surplus real property violates or would violate any of the antitrust laws.

**102-75.285 Can a disposal agency dispose of real property to a private interest specified in 102-75.270 before advice is received from the Attorney General?**

No, advice from the Attorney General must be received before disposing of real property.

## Disposals Under Other Laws

### **102-75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?**

Except for disposals specifically authorized by special legislation, disposals of real property must be made only under the authority of Chapter 5 of Subtitle I of Title 40 of the United States Code. However, the Administrator of General Services can evaluate, on a case-by-case basis, the disposal provisions of any other law to determine consistency with the authority conferred by Title 40. The provisions of this section do not apply to disposals of real property authorized to be made by 40 U.S.C. 113 or by any special statute that directs or requires an Executive agency named in the law to transfer or convey specifically described real property in accordance with the provisions of that statute.

## Credit Disposals

### **102-75.295 What is the policy on extending credit in connection with the disposal of surplus property?**

The disposal agency—

- (a) May extend credit in connection with any disposal of surplus property when it determines that credit terms are necessary to avoid reducing the salability of the property and potential obtainable price and, when below market rates are extended, confer with the Office of Management and Budget to determine if the Federal Credit Reform Act of 1990 is applicable to the transaction;
- (b) Must administer and manage the credit disposal and any related security;
- (c) May enforce, adjust, or settle any right of the Government with respect to extending credit in a manner and with terms that are in the best interests of the Government; and
- (d) Must include provisions in the conveyance documents that obligate the purchaser, where a sale is made upon credit, to obtain the disposal agency's prior written approval before reselling or leasing the property. The purchaser's credit obligations to the United States must be fulfilled before the disposal agency may approve the resale of the property.

## Designation of Disposal Agencies

### **102-75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?**

A landholding agency may be the disposal agency for real and related personal property when—

- (a) The agency has statutory authority to dispose of real and related personal property;

- (b) The agency has delegated authority from GSA to dispose of real and related personal property; or
- (c) The agency is disposing of—
  - (1) Leases, licenses, permits, easements, and other similar real estate interests held by agencies in non-Government-owned real property;
  - (2) Government-owned improvements, including fixtures, structures, and other improvements of any kind as long as the underlying land is not being disposed; or
  - (3) Standing timber, embedded gravel, sand, stone, and underground water, without the underlying land.

**102-75.297 Are there any exceptions to when landholding agencies can serve as the disposal agency?**

- Yes, landholding agencies may not serve as the disposal agency when—
- (a) Either the landholding agency or GSA determines that the Government’s best interests are served by disposing of leases, licenses, permits, easements and similar real estate interests together with other property owned or controlled by the Government that has been or will be reported to GSA, or
  - (b) Government-owned machinery and equipment being used by a contractor- operator will be sold to a contractor-operator.

**102-75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in 102-75.296?**

Yes. If requested, GSA, at its discretion, may be the disposal agency for such real property and real property interests.

**102-75.299 What are landholding agencies’ responsibilities if GSA conducts the disposal?**

Landholding agencies are and remain responsible for all rental/lease payments until the lease expires or is terminated. Landholding agencies are responsible for paying any restoration or other direct costs incurred by the Government associated with termination of a lease, and for paying any demolition and removal costs not offset by the sale of the property. (See also 102-75.965.)

## **Appraisal**

**102-75.300 Are appraisals required for all real property disposal transactions?**

- Generally, yes, appraisals are required for all real property disposal transactions, except when—
- (a) An appraisal will serve no useful purpose (e.g., legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to

negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in subpart C of this part; or  
(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed \$300,000.

### **110-75.300            USDA Appraisals**

USDA agencies have been delegated authority to determine that excess real property and related personal property under the control of USDA having a total estimated Fair Market Value (FMV), including all the component units of the property, of less than \$50,000 to dispose of said property by means deemed advantageous to the United States in accordance with [102-75.1075](#)

#### **102-75.305            What type of appraisal value must be obtained for real property disposal transactions?**

For all real property transactions requiring appraisals, agencies must obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of the property available for disposal.

#### **102-75.310            Who must agencies use to appraise the real property?**

Agencies must use only experienced and qualified real estate appraisers familiar with the types of property to be appraised when conducting the appraisal. When an appraisal is required for negotiation purposes, the same standard applies. However, agencies may authorize other methods of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining that data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

#### **102-75.315            Are appraisers authorized to consider the effect of historic covenants on the fair market value?**

Yes, appraisers are authorized to consider the effect of historic covenants on the fair market value, if the property is in or eligible for listing in the National Register of Historic Places.

#### **102-75.320            Does appraisal information need to be kept confidential?**

Yes, appraisals, appraisal reports, appraisal analyses, and other pre-decisional appraisal documents are confidential and can only be used by authorized Government personnel who can substantiate the need to know this information. Appraisal information must not be divulged prior to the delivery and acceptance of the deed. Any persons engaged to collect or evaluate appraisal information must certify that—  
(a) They have no direct or indirect interest in the property; and  
(b) The report was prepared and submitted without bias or influence.

## **Inspection**

### **102-75.325      What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?**

Landholding agencies should provide all persons interested in acquiring available surplus property with the opportunity to make a complete inspection of the property, including any available inventory records, plans, specifications, and engineering reports that relate to the property. These inspections are subject to any necessary national security restrictions and are subject to the disposal agency's rules. (See 102-75.335 and 102-75.985.)

## **Submission of Offers To Purchase or Lease**

### **102-75.330      What form must all offers to purchase or lease be in?**

All offers to purchase or lease must be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency. In addition to the financial terms upon which the offer is predicated, the offer must set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and must contain such other information as the disposal agency may request.

## **Provisions Relating to Asbestos**

### **102-75.335      Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?**

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see 102-75.125), the disposal agency must incorporate this information (less any cost or time estimates to remove the asbestos-containing materials) into any offer to purchase and conveyance document and include the following wording:

Notice of the Presence of Asbestos—Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases

the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) that may be required in order to carry out any such inspection(s). Bidders (offerors) shall be deemed to have relied solely on their own including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability, or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property that is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that, in its use and occupancy of the property, it will comply with all Federal, State, and local laws relating to asbestos.

### **Provisions Relating to Hazardous Substance Activity**

#### **102-75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?**

Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see §§102-75.125 and 102-75.130), the disposal agency must incorporate this information into any offer to purchase and conveyance

document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in the GSA Customer Guide to Real Property Disposal):

- (a) Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency.
- (b) A statement, certified by a responsible landholding agency official in the Report of Excess Real Property, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of CERCLA, or the Early Transfer Authority, or a conveyance to a “potentially responsible party”, as defined by CERCLA (see 102-75.345)).
- (c) A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance.
- (d) A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

**102-75.345      What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?**

In the case where the purchaser or grantee is a potentially responsible party (PRP) with respect to hazardous substance activity on the property under consideration, the United States is no longer under a general obligation to certify that the property has been successfully remediated, or to commit to return to the property to address contamination that is discovered in the future. Therefore, the statements of responsibility and commitments on behalf of the United States referenced in 102-75.340 should not be used. Instead, language should be included in the offer to purchase and conveyance document that is consistent with any agreement that has been reached between the landholding agency and the PRP with regard to prior hazardous substance activity.

### **Public Benefit Conveyances**

**102-75.350      What are disposal agencies’ responsibilities concerning public benefit conveyances?**

Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain non-profit institutions or organizations at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports,

and wildlife conservation. The implementing regulations for these conveyances are found in this subpart.

**102-75.351 May the disposal agency waive screening for public benefit conveyances?**

All properties, consistent with the highest and best use analysis, will normally be screened for public benefit uses. However, the disposal agency may waive public benefit screening, with the exception of the mandatory McKinney-Vento homeless screening, for specific property disposal considerations, e.g., when a property has been reported excess for exchange purposes.

**102-75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?**

Executive agencies must include in the offer to purchase and conveyance documents the non-discrimination clause in 102-75.360 for public benefit conveyances.

**102-75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and in the conveyance document?**

The wording of the non-discrimination clause must be as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

### **Power Transmission Lines**

**102-75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?**

Yes, disposal agencies must notify State entities and Government agencies of the availability of a surplus power transmission line and right-of-way.

**102-75.370**      **May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?**

Yes, section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App.1622(d)) allows any State or political subdivision, or any State or Government agency or instrumentality to certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needed to meet the requirements of a public or cooperative power project.

**102-75.375**      **What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative owner project?**

Generally, once a State or political subdivision certifies that it needs a surplus power transmission line and the right-of-way, the disposal agency may sell the property to the state, or political subdivision thereof, at the fair market value. However, if a sale of a surplus transmission line cannot be accomplished because of the price to be charged, or other reasons, and the certification by the State or political subdivision is not withdrawn, the disposal agency must report the facts involved to the Administrator of General Services, to determine what further action will or should be taken to dispose of the property.

**102-75.380**      **May power transmission lines and rights-of-way be disposed of in other ways?**

Yes, power transmission lines and rights-of-way not disposed of by sale for fair market value may be disposed of following other applicable provisions of this part, including, if appropriate, reclassification by the disposal agency.

### **Property for Public Airports**

**102-75.385**      **Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?**

Yes, the disposal agency must notify eligible public agencies that property currently used as or suitable for use as a public airport under the Surplus Property Act of 1944, as amended, has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) must be transmitted with the copy of the surplus property notice sent to the appropriate regional office of the Federal Aviation Administration (FAA). The FAA must furnish an application form and instructions for the preparation of an application to eligible public agencies upon request. §102-75.390—What does the term “surplus airport property” mean?

For the purposes of this part, surplus airport property is any surplus real property including improvements and personal property included as a part of the operating unit that the Administrator of FAA deems is—

(a) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101); or

(b) Reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from non-aviation businesses at a public airport. Approval for non-aviation revenue-producing areas may only be given for such areas as are anticipated to generate net proceeds that do not exceed expected deficits for operation of the aviation area applied for at the airport.

**102-75.395      May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?**

Yes, section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151) authorizes the disposal agency to convey or dispose of surplus airport property to a State, political subdivision, municipality, or tax-supported institution for use as a public airport.

**102-75.400      Is industrial property located on an airport also considered to be “airport property”?**

No, if the Administrator of General Services determines that a property’s highest and best use is industrial, then the property must be classified as such for disposal without regard to the public benefit conveyance provisions of this subpart.

**102-75.405      What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?**

As soon as possible after receiving the copy of the surplus notice, the FAA must inform the disposal agency of its determination. Then, the FAA must provide assistance to any eligible public agency known to have a need for the property for a public airport, so that the public agency may develop a comprehensive and coordinated plan of use and procurement for the property.

**102-75.410      What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?**

After an eligible public agency submits a plan of use and application, the disposal agency must transmit two copies of the plan and two copies of the application to the appropriate FAA regional office. The FAA must promptly submit a recommendation to the disposal agency for disposal of the property for a public airport or must inform the disposal agency that no such recommendation will be submitted.

**102-75.415      What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?**

The head of the disposal agency, or his or her designee, may convey property approved by the FAA for use as a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended.

**102-75.420      What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?**

Any airport property that the FAA does not recommend for disposal as a public airport must be disposed of in accordance with other applicable provisions of this part. However, the disposal agency must first notify the landholding agency of its inability to dispose of the property for use as a public airport. In addition, the disposal agency must allow the landholding agency 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

**102-75.425      Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?**

The Administrator of the FAA has the sole responsibility for enforcing compliance with the terms and conditions of disposals to be used as a public airport. The FAA is also responsible for reforming, correcting, or amending any disposal instruments; granting releases; and any action necessary for recapturing the property, using the provisions of 49 U.S.C. 47101 et seq.

**102-75.430      What happens if property conveyed for use as a public airport is revested in the United States?**

If property that was conveyed for use as a public airport is revested in the United States for noncompliance with the terms of the disposal, or other cause, the Administrator of the FAA must be accountable for the property and must report the property to GSA as excess property following the provisions of this part.

**102-75.435      Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970), apply to the transfer of airports to State and local agencies?**

No, the Airport and Airway Development Act of 1970, as amended (49 U.S.C.47101–47131) (Airport Act of 1970), does not apply to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be

made only under section 13(g) of the Surplus Property Act of 1944 (49 U.S.C.47151–47153). Only property that the landholding agency determines cannot be reported excess to GSA for disposal under Title 40, but nevertheless may be made available for use by a State or local public body as a public airport without being inconsistent with the Federal program of the landholding agency, may be conveyed under the Airport Act of 1970. In the latter instance, the Airport Act of 1970 may be used to transfer non-excess land for airport development purposes provided it does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

### **Property for Use as Historic Monuments**

#### **102-75.440 Who must disposal agencies notify that surplus property is available for historic monument use?**

Disposal agencies must notify State and area wide clearinghouses and eligible public agencies that property that may be conveyed for use as a historic monument has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118) with accompanying schedules must be transmitted with the copy of each notice that is sent to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI).

#### **102-75.445 Who can convey surplus real and related personal property for historic monument use?**

A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public, provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.

#### **102-75.450 What type of property is suitable or desirable for use as a historic monument?**

Only property conforming to the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments shall be determined to be suitable or desirable for use as a historic monument.

#### **102-75.455 May historic monuments be used for revenue-producing activities?**

The disposal agency may authorize the use of historic monuments conveyed under 40 U.S.C. 550(h) or the Surplus Property Act of 1944, as amended, for revenue-producing activities, if the Secretary of the Interior—

- (a) Determines that the activities, described in the applicant's proposed program of use, are compatible with the use of the property for historic monument purposes;
- (b) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;
- (c) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. DOI must not approve the plan unless it provides that all income in excess of costs of repair, rehabilitation, restoration, maintenance, and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities, is used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and
- (d) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

**102-75.460            What information must disposal agencies furnish eligible public agencies?**

Upon request, the disposal agency must furnish eligible public agencies with adequate preliminary property information and, with the landholding agency's cooperation, provide assistance to enable public agencies to obtain adequate property information.

**102-75.465            What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?**

Eligible public agencies must submit the original and two copies of the completed application to acquire real property for use as a historic monument to the appropriate regional or field offices of NPS, which will forward one copy of the application to the appropriate regional office of the disposal agency.

**102-75.470            What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?**

NPS must promptly—

- (a) Submit the Secretary of the Interior's determination to the disposal agency;
- or
- (b) Inform the disposal agency that no such recommendation will be submitted.

**102-75.475            What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?**

The head of the disposal agency or his or her designee may convey to an eligible public agency surplus property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of 40 U.S.C. 550(h).

**102-75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?**

The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of such a disposal. DOI is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property using the provisions of 40 U.S.C. 550(b). The actions are subject to the approval of the head of the disposal agency.

**102-75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?**

In such a case, DOI must notify the appropriate GSA Public Buildings Service (PBS) Regional Office immediately by letter when title to the historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, including any improvements constructed since the original conveyance to the grantee. After receiving a statement from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Report of Excess Real Property, Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance of the property until the title reverts to the Federal Government, including the period of the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Educational and Public Health Purposes**

**102-75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available for educational and/or public health purposes. The notice must require that any plans for an educational or public health use, resulting from the development of

the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with the Department of Education (ED) or the Department of Health and Human Services (HHS), as appropriate. The notice must also let eligible public agencies know where to obtain the applications, instructions for preparing them, and where to submit the application. The requirement for educational or public health use of the property by an eligible public agency is contingent upon the disposal agency's approval, under 102-75.515, of a recommendation for assignment of Federal surplus real property received from ED or HHS. Further, any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in 102-75.535.

**102-75.495        May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?**

Yes, ED or HHS may notify eligible non-profit institutions that such property has been determined to be surplus. Notices to eligible non-profit institutions must require eligible non-profit institutions to coordinate any request for educational or public health use of the property with the appropriate public agency responsible for developing and submitting a comprehensive and coordinated plan of use and procurement for the property.

**102-75.500        Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?**

The head of the disposal agency or his designee may—

(a) Assign to the Secretary of ED for disposal under 40 U.S.C. 550(c) surplus real property, including buildings, fixtures, and equipment, as recommended by the Secretary as being needed for school, classroom, or other educational use; or

(b) Assign to the Secretary of HHS for disposal under 40 U.S.C. 550 (d) such surplus real property, including buildings, fixtures, and equipment situated thereon, as recommended by the Secretary as being needed for use in the protection of public health, including research.

**102-75.505        Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?**

Yes, eligible non-profit organizations will only receive surplus real property for an educational or public health use if the disposal agency approves or grants the assignment request from either ED or HHS. The disposal agency will also consider other uses for available surplus real property, taking into account the highest and best use determination. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in this part.

**102-75.510**      **When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?**

ED and HHS must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, ED or HHS has 30 calendar days to review and approve an application and request assignment of the Property, or inform the disposal agency that no assignment request will be forthcoming.

**102-75.515**      **What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?**

When an eligible public agency submits a plan of use for property for an educational or public health requirement, the disposal agency must transmit two copies of the plan to the regional office of ED or HHS, as appropriate. The ED or HHS must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, as appropriate, or must inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it must assign the property by letter or other document to the Secretary of ED or HHS, as appropriate. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the appropriate Department.

**102-75.520**      **What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?**

Any assignment recommendation that ED or HHS submits to the disposal agency must provide complete information concerning the educational or public health use, including—

- (a) Identification of the property;
  - (b) The name of the applicant and the size and nature of its program;
  - (c) The specific use planned;
  - (d) The intended public benefit allowance;
  - (e) The estimate of the value upon which such proposed allowance is based;
- and
- (f) An explanation if the acreage or value of the property exceeds the standards established by the Secretary.

**102-75.525**      **What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?**

Landholding agencies must cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating to the property.

**102-75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?**

In the absence of an approved application from ED or HHS to convey the property for educational or public health purposes, which must be received within the 30 calendar day time limit, the disposal agency will proceed with other disposal actions.

**102-75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, ED or HHS must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 days of receiving the Notice of Proposed Transfer, ED or HHS may prepare the transfer documents and proceed with the transfer. ED or HHS must take all necessary actions to accomplish the transfer within 15-calendar days beginning when the disposal agency approves the transfer. ED or HHS must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(c) or (d) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**102-75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?**

ED or HHS, as appropriate, is responsible for enforcing compliance with the terms and conditions of transfer. ED or HHS is also responsible for reforming, correcting, or amending any transfer instruments; granting releases; and for taking any necessary actions for recapturing the property using or following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. ED or HHS must notify the disposal agency of its intent to take any actions to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**102-75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, ED or HHS must,

prior to repossession or reversion of title, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from ED or HHS that the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with ED or HHS, determines that the property should be revested, ED or HHS must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

### **Property for Providing Self-Help Housing or Housing Assistance**

#### **102-75.550      What does “self-help housing or housing assistance” mean?**

Property for self-help housing or housing assistance (which is separate from the program under Title V of the McKinney-Vento Homeless Assistance Act covered in subpart H of this part) is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of housing, under terms that require that—

- (a) Any individual or family receiving housing or housing assistance must contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and
- (b) Dwellings constructed, rehabilitated, or refurbished must be quality dwellings that comply with local building and safety codes and standards and must be available at prices below prevailing market prices.

#### **102-75.555      Which Federal agency receives the property assigned for self- help housing or housing assistance for low-income individuals or families?**

The head of the disposal agency, or designee, may assign, at his/her discretion, surplus real property, including buildings, fixtures, and equipment to the Secretary of the Department of Housing and Urban Development (HUD).

#### **102-75.560      Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available. The notice must require that any plans for self-help housing or housing assistance use resulting from the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD. Eligible public agencies may obtain an application form and instructions for preparing and submitting the application from HUD.

**102-75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or non-profit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?**

Yes, the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization is contingent upon the disposal agency's approval under 102-75.585 of HUD's assignment recommendation/request. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(f) and referenced in 102-75.605.

**102-75.570 What happens if the disposal agency does not approve the assignment recommendation?**

If the recommendation is not approved, the disposal agency must also notify the Secretary of HUD and then may proceed with other disposal action.

**102-75.575 Who notifies non-profit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?**

HUD notifies eligible non-profit organizations, following guidance in the GSA Customer Guide to Real Property Disposal. Such notices must require eligible nonprofit organizations to—

- (a) Coordinate any requirement for self-help housing or housing assistance use of the property with the appropriate public agency; and
- (b) Declare to the disposal agency intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property.

**102-75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?**

HUD must notify the disposal agency within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, HUD has 30 calendar days to review and approve an application and request assignment or inform the disposal agency that no assignment request is forthcoming.

**102-75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?**

When an eligible public agency submits a plan of use for property for a self-help housing or housing assistance requirement, the disposal agency must transmit two copies of the plan to the appropriate HUD regional office. HUD must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a

recommendation for assignment of the property to the Secretary of HUD, or must inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to HUD. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it must assign the property by letter or other document to the Secretary of HUD. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify the Secretary of HUD.

**102-75.590 What does the assignment recommendation contain?**

Any assignment recommendation that HUD submits to the disposal agency must set forth complete information concerning the self-help housing or housing assistance use, including—

- (a) Identification of the property;
- (b) Name of the applicant and the size and nature of its program;
- (c) Specific use planned;
- (d) Intended public benefit allowance;
- (e) Estimate of the value upon which such proposed allowance is based; and
- (f) An explanation, if the acreage or value of the property exceeds the standards established by the Secretary.

**102-75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?**

Landholding agencies must cooperate to the fullest extent possible with HUD representatives in their inspection of such property and in furnishing information relating to such property.

**110-75.595 USDA Agencies Report for Self-Help or Housing Assistance Use**

In accordance with [Public Law 101-645](#), McKinney-Vento Homeless Assistance Act, (Act), USDA landholding agencies shall report any newly identified **excess, underutilized, and unutilized** real property to HUD utilizing the Title V Property Survey Federal Property Information Checklist. This form is available on the PMD SharePoint site. OPPM/PMD will submit a quarterly summary of properties newly identified as excess, underutilized and unutilized by the 15th day following the end of each quarter (Jan. 15, Apr. 15, Jul., 15, and Oct., 15) in accordance with OPPM Advisory 13-03. The Advisory is available on the OPPM/PMD SharePoint site.

**102-75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?**

In the absence of an approved application from HUD for self-help housing or housing assistance use, which must be received within the 30-calendar day time limit specified therein, the disposal agency must proceed with other disposal action.

**102-75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, HUD must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days of receiving the Notice of Proposed Transfer, HUD may prepare the transfer documents and proceed with the transfer. HUD must take all necessary actions to accomplish the transfer within 15 calendar days beginning when the disposal agency approves the transfer. HUD must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(f) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**102-75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?**

HUD is responsible for enforcing compliance with the terms and conditions of transfer. HUD is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for taking any necessary actions for recapturing the property using the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. HUD must notify the head of the disposal agency of its intent to take action to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**102-75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?**

HUD maintains responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Property transferred to an entity other than a public body and used for any purpose other than that for which it was sold or leased within a 30-year period must revert to the United States. If the property was leased, then the lease terminates. The appropriate Secretary (HUD or Department of Agriculture) and the Administrator of GSA can approve the new use of the property after the first 20 years of the original 30-year period has expired.

**102-75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) must, prior to repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from HUD (or USDA) that title to the property is proposed for reversion, GSA will review the statement and determine if title should be reversioned. If GSA, in conjunction with HUD (or USDA), determines that the property should be reversioned, HUD (or USDA) must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

### **Property for Use as Public Park or Recreation Areas**

#### **102-75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?**

The head of the disposal agency or his or her designee is authorized to assign to the Secretary of the Interior for disposal under 40 U.S.C. 550(e), surplus real property, including buildings, fixtures, and equipment as recommended by the Secretary as being needed for use as a public park or recreation area for conveyance to a State, political subdivision, instrumentalities, or municipality. §102-75.630—Who must disposal agencies notify that real property for public park or recreation purposes is available?

The disposal agency must notify established State, regional, or metropolitan clearinghouses and eligible public agencies that surplus property is available for use as a public park or recreation area. The disposal agency must transmit the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) with the copy of each notice sent to a regional or field office of the National Park Service (NPS) of the Department of the Interior (DOI).

#### **102-75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?**

Upon request, DOI must furnish eligible public agencies with an application form to acquire property for permanent use as a public park or recreation area and preparation instructions for the application.

**102-75.640      When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?**

DOI must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days from the date of the surplus notice.

**102-75.645      What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?**

Landholding agencies must cooperate to the fullest extent possible with DOI representatives in their inspection of the property and in furnishing information relating to the property.

**102-75.650      When must DOI request assignment of the property?**

Within 30 calendar days after the expiration of the 30-calendar day period specified in 102-75.640, DOI must submit to the disposal agency an assignment recommendation along with a copy of the application or inform the disposal agency that a recommendation will not be made for assignment of the property.

**102-75.655      What does the assignment recommendation contain?**

Any recommendation submitted by DOI must provide complete information concerning the plans for use of the property as a public park or recreation area, including—

- (a) Identification of the property;
- (b) The name of the applicant;
- (c) The specific use planned; and
- (d) The intended public benefit allowance.

**102-75.660      What happens if DOI does not approve any applications or does not submit an assignment recommendation?**

If DOI does not approve any applications or does not submit an assignment recommendation to convey the property for public park or recreation purposes, the disposal agency must proceed with other disposal action.

**102-75.665      What happens after the disposal agency receives the assignment recommendation from DOI?**

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOI, it must assign the property by letter or other document to the Secretary of the Interior. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the Secretary.

**102-75.670      What responsibilities does DOI have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, the Secretary of the Interior must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days, the Secretary may proceed with the transfer. DOI must take all necessary actions to accomplish the transfer within 15 calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. DOI may place the applicant in possession of the property as soon as practicable to minimize the Government's expense of protection and maintenance of the property. As of the date the applicant takes possession of the property, or the date it is conveyed, whichever occurs first, the applicant must assume responsibility for care and handling and all risks of loss or damage to the property, and has all obligations and liabilities of ownership. DOI must furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under 40 U.S.C. 550(e) and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

**102-75.675      What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?**

Where appropriate, the disposal agency may make the assignment subject to DOI requiring the grantee or recipient to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer, such as for surveys, fencing, security of the remaining property, or otherwise.

**102-75.680      What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?**

The deed of conveyance of any surplus real property transferred for public park and recreation purposes under 40 U.S.C. 550(e) must require that the property be used and maintained for the purpose for which it was conveyed in perpetuity. In the event that the property ceases to be used or maintained for that purpose, all or any portion of such property will in its existing condition, at the option of the United States, revert to the United States. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions determined by the Secretary of the Interior to be necessary to safeguard the interests of the United States.

**102-75.685      Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?**

The Secretary of the Interior is responsible for enforcing compliance with the terms and conditions of transfer. The Secretary of the Interior is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for

recapturing any property following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. DOI must notify the head of the disposal agency of its intent to take or recapture the property. The notice must identify the property affected and describe in detail the proposed action, including the reasons for the proposed action.

**102-75.690      What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?**

DOI must notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, using the Report of Excess Real Property (Standard Form 118) and the appropriate schedules. After receiving notice from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Displaced Persons**

**102-75.695      Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?**

Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4638 (the Relocation Act), authorizes the disposal agency to transfer surplus real property to a State agency to provide replacement housing under title II of the Relocation Act for persons who are or will be displaced by Federal or Federally assisted projects.

**102-75.700      Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?**

After receiving the surplus notice, any Federal agency needing property for replacement housing for displaced persons may solicit applications from eligible State agencies.

**102-75.705      When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?**

Federal agencies must notify the disposal agency within 30 calendar days after the date of the surplus notice, if an eligible State agency is interested in acquiring the property under section 218 of the Relocation Act.

**102-75.710      What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

Both landholding and disposal agencies must cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of the property and in furnishing information relating to the property.

**102-75.715      When can a Federal agency request transfer of the property to the selected State agency?**

Federal agencies must advise the disposal agency and request transfer of the property to the selected State agency within 30 calendar days after the expiration of the 30-calendar day period specified in 102-75.705.

**102-75.720      Is there a specific or preferred format for the transfer request and who should receive it?**

Any request submitted by a Federal agency must be in the form of a letter addressed to the appropriate GSA Public Buildings Service (PBS) regional property disposal office.

**102-75.725      What does the transfer request contain?**

Any transfer request must include—

- (a) Identification of the property by name, location, and control number;
- (b) The name and address of the specific State agency and a copy of the State agency's application or proposal;
- (c) A certification by the appropriate Federal agency official that the property is required to house displaced persons authorized by section 218; that all other options authorized under title II of the Relocation Act have been explored and replacement housing cannot be found or made available through those channels; and that the Federal or Federally assisted project cannot be accomplished unless the property is made available for replacement housing;
- (d) Any special terms and conditions that the Federal agency deems necessary to include in conveyance instruments to ensure that the property is used for the intended purpose;

- (e) The name and proposed location of the Federal or Federally assisted project that is creating the requirement;
- (f) Purpose of the project;
- (g) Citation of enabling legislation or authorization for the project, when appropriate;
- (h) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Relocation Act; and
- (i) Details of the arrangements that have been made to construct replacement housing on the surplus property and to ensure that displaced persons will be provided housing in the development.

**102- 75.730            What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

If the disposal agency does not receive a request for assignment or transfer of the property under 102 75.715, then the disposal agency must proceed with other appropriate disposal actions.

**102-75.735            What happens after the disposal agency receives the transfer request from the Federal agency?**

If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it must transfer the property to the designated State agency on such terms and conditions as will protect the United States' interests, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency must be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value. Disposal of the property at less than fair market value must also be approved by the disposal agency.

**102-75.740            Does the State agency have any responsibilities in helping to accomplish the transfer of the property?**

Yes, the State agency is required to bear the costs of any out-of-pocket expenses necessary to accomplish the transfer, such as costs of surveys, fencing, or security of the remaining property. §102-75.745—What happens if the property transfer request is not approved by the disposal agency?

If the request is not approved, the disposal agency must notify the Federal agency requesting the transfer. The disposal agency must furnish a copy of the notice of disapproval to the landholding agency.

## **Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes**

### **102-75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?**

Under 40 U.S.C. 553, the head of the disposal agency or designee may, in his or her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named in the section; or to any political subdivision or instrumentality, surplus real and related personal property for—

- (a) Correctional facility purposes, if the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;
- (b) Law enforcement purposes, if the Attorney General has determined that the property is required for such purposes; or
- (c) Emergency management response purposes, including fire and rescue services, if the Director of the Federal Emergency Management Agency (FEMA) has determined that the property is required for such purposes.

### **102-75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?**

The disposal agency must provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and FEMA that surplus property is available. The disposal agency's notice or notification must include a copy of the landholding agency's Report of Excess Real Property (Standard Form 118), with accompanying schedules.

### **102-75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?**

OJP or FEMA must send notices of availability to the appropriate State and local public agencies. The notices must state that OJP or FEMA, as appropriate, must coordinate and approve any planning involved in developing a comprehensive and coordinated plan of use and procurement for the property for correctional facility, law enforcement, or emergency management response use. The notice must also state that public agencies may obtain application forms and preparation instructions from OJP or FEMA.

### **102-75.765 What does the term "law enforcement" mean?**

The OJP defines “law enforcement” as “any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training.”

**102-75.77 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?**

Yes, the disposal agency must approve a determination, under 102-75.795, by DOJ that identifies surplus property required for correctional facility use or for law enforcement use before an eligible public agency can obtain such property for correctional facility or law enforcement use.

**102-75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?**

Yes, the disposal agency must approve a determination, under 102-75.795, by FEMA that identifies surplus property required for emergency management response use before an eligible public agency can obtain such property for emergency management response use.

**102-75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?**

OJP or FEMA must notify the disposal agency within 30 calendar days after the date of the surplus notice, if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, OJP or FEMA then has another 30 days to review and approve an appropriate program and notify the disposal agency of the need for the property. If no application is approved, then OJP or FEMA must notify the disposal agency that there is no requirement for the property within the 30-calendar day period allotted for review and approval.

**102-75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?**

Any determination that DOJ or FEMA submits to the disposal agency must provide complete information concerning the correctional facility, law enforcement, or emergency management response use, including—

- (a) Identification of the property;
- (b) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;
- (c) A copy of the approved application that defines the proposed plan of use;
- and
- (d) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

**102-75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?**

Both landholding and disposal agencies must cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating to the property.

**102-75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?**

If, after considering other uses for the property, the disposal agency approves the assignment request by DOJ or FEMA, the disposal agency must convey the property to the appropriate grantee. The disposal agency must proceed with other disposal action if it does not approve the assignment request, if DOJ or FEMA does not submit an assignment request, or if the disposal agency does not receive the determination within the 30 calendar days specified in 102-75.780. The disposal agency must notify OJP or FEMA 15 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and must furnish to OJP or FEMA a copy of the conveyance documents.

**102-75.800 What information must be included in the deed of conveyance?**

The deed of conveyance of any surplus real property transferred under the provisions of 40 U.S.C. 553 must provide that all property be used and maintained for the purpose for which it was conveyed in perpetuity. If the property ceases to be used or maintained for that purpose, all or any portion of the property must, at the option of the United States, revert to the United States in its existing condition. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions the Administrator of General Services determines to be necessary to safeguard the United States' interests.

**102-75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?**

The Administrator of General Services is responsible for enforcing compliance with the terms and conditions of disposals of property to be used for correctional facility, law enforcement, or emergency management response purposes. GSA is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property following the provisions of 40 U.S.C. 553(e).

**102-75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?**

Upon discovery of any information indicating a change in use, OJP or FEMA must—

(a) Notify GSA; and

(b) Upon request, make a redetermination of continued appropriateness of the use of a transferred property.

**102-75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?**

OJP or FEMA must, prior to the repossession, provide the appropriate GSA 1 property disposal office with an accurate description of the real and related personal property involved. OJP or FEMA must use the Report of Excess Real Property (Standard Form 118), and the appropriate schedules for this purpose. After receiving a statement from OJP or FEMA that the title to the property is proposed for reversion, GSA will review the statement and determine if title should be reverted. If GSA, in consultation with OJP or FEMA, determines that the property should be reverted, OJP or FEMA must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Port Facility Use**

**102-75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?**

Under 40 U.S.C. 554, the Administrator of General Services, the Secretary of the Department of Defense (in the case of property located at a military installation closed or realigned pursuant to a base closure law), or their designee, may assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to governmental bodies, any political subdivision, municipality, or instrumentality, surplus real and related personal property, including buildings, fixtures, and equipment situated on the property, that DOT recommends as being needed for the development or operation of a port facility.

**102-75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?**

The disposal agency must notify established State, regional or metropolitan clearinghouses and eligible public agencies that surplus real property is available for the development or operation of a port facility. The disposal agency must transmit a

copy of the notice to DOT and a copy of the landholding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

**102-75.830            What does the surplus notice contain?**

Surplus notices to eligible public agencies must state—

- (a) That public agencies must coordinate any planning involved in the development of the comprehensive and coordinated plan of use and procurement of property, with DOT, the Secretary of Labor, and the Secretary of Commerce;
- (b) That any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for the application and instructions;
- (c) That the disposal agency must approve a recommendation from DOT before it can assign the property to DOT (see 102-75.905); and
- (d) That any subsequent conveyance is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 554 and referenced in 102-75.865.

**102-75.835            When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?**

DOT must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, DOT then has another 30 calendar days to review and approve applications and notify the disposal agency of the need for the property. If no application is approved, then DOT must notify the disposal agency that there is no requirement for the property within the same 30-calendar day period allotted for review and approval.

**102-75.840            What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?**

Whenever an eligible public agency has submitted a plan of use for a port facility requirement, the disposal agency must transmit two copies of the plan to DOT. DOT must either submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to DOT.

**102-75.845            What must DOT address in the assignment recommendation submitted to the disposal agency?**

Any assignment recommendation that DOT submits to the disposal agency must provide complete information concerning the contemplated port facility use, including—

- (a) An identification of the property;
- (b) An identification of the applicant;
- (c) A copy of the approved application, which defines the proposed plan of use of the property;
- (d) A statement that DOT's determination (that the property is located in an area of serious economic disruption) was made in consultation with the Secretary of Labor;
- (e) A statement that DOT approved the economic development plan, associated with the plan of use of the property, in consultation with the Secretary of Commerce; and
- (f) A copy of the explanatory statement required less than 40 U.S.C. 554(c)(2)(C).

**102-75.850      What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?**

Landholding agencies must cooperate to the fullest extent possible with DOT representatives and the Secretary of Commerce in their inspection of such property, and with the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating to such property.

**102-75.855      What happens if DOT does not submit an assignment recommendation?**

If DOT does not submit an assignment recommendation or if it is not received within 30 calendar days, the disposal agency must proceed with other disposal action.

**102-75.860      What happens after the disposal agency receives the assignment recommendation from DOT?**

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, the disposal agency must assign the property by letter or other document to DOT. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify DOT. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency.

**102-75.865      What responsibilities does DOT have after receiving the disposal agency's assignment letter?**

After receiving the assignment letter from the disposal agency, DOT must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days after the date of the assignment letter. If the disposal agency approves the proposed transfer within 30 calendar days of the receipt of the Notice of Proposed Transfer, DOT may prepare the conveyance documents and proceed with the conveyance. DOT must take all necessary actions to accomplish the conveyance within 15 calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. DOT must furnish the disposal agency two

conformed copies of the instruments conveying property and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

**102-75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?**

DOT is responsible for enforcing compliance with the terms and conditions of conveyance, including reforming, correcting, or amending any instrument of conveyance; granting releases; and taking any necessary actions to recapture the property following the provisions of 40 U.S.C. 554(f). Any of these actions are subject to the approval of the head of the disposal agency. DOT must notify the head of the disposal agency of its intent to take any proposed action, identify the property affected, and describe in detail the proposed action, including the reasons for the proposed action.

**102-75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?**

In each case of repossession by the United States, DOT must, at or prior to reversion of title, provide the appropriate GSA regional property disposal office, with a Report of Excess Real Property (Standard Form 118) and accompanying schedules. After receiving a statement from DOT that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOT, determines that the property should be revested, DOT must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Negotiated Sales**

**102-75.880 When may Executive agencies conduct negotiated sales?**

Executive agencies may conduct negotiated sales only when—

- (a) The estimated fair market value of the property does not exceed \$15,000;
- (b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;
- (c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

(d) The disposals will be to States, the Commonwealth of Puerto Rico, possessions, political subdivisions, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

(e) Negotiation is otherwise authorized by Chapter 5 of Subtitle I of Title 40 of the United States Code or other law, such as disposals of power transmission lines for public or cooperative power projects.

**102-75.885            What are the disposal agency’s responsibilities concerning negotiated sales?**

The disposal agency must—

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement if the fair market value of the property exceeds \$100,000, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 545(e), to the appropriate committees of the Congress in advance of such disposal.

**102-75.890            What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?**

Disposal agencies must include in the offer to purchase and conveyance documents an excess profits clause, which usually runs for 3 years, to eliminate the potential for windfall profits to public agencies. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchaser’s costs will be remitted to the Federal Government.

**102-75.895            What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?**

The wording of the excess profits clause should generally be as follows: Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee’s or a subsequent seller’s actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

- (1) The purchase price of the real property.
- (2) The direct costs actually incurred and paid for improvements that serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements.
- (3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section.
- (4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) To verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

- (1) A statement indicating whether or not a resale has been made.
- (2) A description of each portion of the property that has been resold.
- (3) The sale price of each such resold portion.
- (4) The identity of each purchaser.
- (5) The proposed land use.
- (6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions that it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

**102-75.900            What is a negotiated sale for economic development purposes?**

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

**Explanatory Statements for Negotiated Sales**

**102-75.905            When must the disposal agency prepare an explanatory statement?**

The disposal agency must prepare an explanatory statement of the circumstances of each of the following proposed disposals by negotiation: (a) Any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange is subject only to paragraphs (b) through (d) of this section.

(b) Any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years.

(c) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of \$100,000.

(d) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property disposed in which any part of the consideration is real property.

**102-75.910            Are there any exceptions to this policy of preparing explanatory statements?**

Yes, the disposal agency is not required to prepare an explanatory statement for property authorized to be disposed of without advertising by any provision of law other than 40 U.S.C. 545.

**102-75.915            Do disposal agencies need to retain a copy of the explanatory statement?**

Yes, disposal agencies must retain a copy of the explanatory statement in their files.

**102-75.920            Where is the explanatory statement sent?**

Disposal agencies must submit each explanatory statement to the Administrator of General Services for review and transmittal by letter from the Administrator of General Services to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and any other appropriate committees of the Senate and House of Representatives. Disposal agencies must include in the submission to the Administrator of General Services any supporting data that may be relevant and necessary for evaluating the proposed action.

**102-75.925            Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?**

Yes, GSA must furnish copies of its transmittal letters to the committees of the Congress (see 102-75.920) to the disposal agency.

**110-75.925            Explanatory Statement**

The explanatory statement for the Congress required by 102-75.925 shall be sent to OPPM. OPPM will advise the agency when sale is authorized.

**102-75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?**

If there is no objection, the disposal agency may consummate the sale on or after 35 days from the date the Administrator of General Services transmitted the explanatory statement to the committees. If there is an objection, the disposal agency must resolve objections with the appropriate Congressional committee or subcommittee before consummating the sale.

**Public Sales**

**102-75.935 What are disposal agencies' responsibilities concerning public sales?**

Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

**Disposing of Easements**

**102-75.936 When can an agency dispose of an easement?**

When the use, occupancy or control of an easement is no longer needed, agencies may release the easement to the owner of the land subject to the easement (servant estate).

**102-75.937 Can an easement be released or disposed of at no cost?**

Yes. However, agencies must consider the Government's cost of acquiring the easement and other factors when determining if the easement will be disposed of with or without monetary or other consideration. If the easement was acquired at substantial consideration, agencies must—

- (a) Determine the easement's fair market value (estimate the fair market value of the fee land without the easement and with the easement then compute the difference or compute the damage the easement caused to the fee land); and
- (b) Negotiate the highest obtainable price with the owner of the servient estate to release the easement.

**102-75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?**

Yes. If the easement is no longer needed in connection with the dominant estate, it may be disposed of separately to the owner of the servient estate. However, if the

dominant estate is also surplus, the easement should be disposed of with the dominant estate.

### **Granting Easements**

#### **102-75.939 When can agencies grant easements?**

Agencies may grant easements in, on, or over Government-owned real property upon determining that the easement will not adversely impact the Government's interests.

#### **102-75.940 Can agencies grant easements at no cost?**

Yes. Easements may be granted with or without monetary or other consideration, including any interest in real property.

#### **102-75.941 Does an agency retain responsibility for the easement?**

Agencies may relinquish legislative jurisdiction as deemed necessary and desirable to the State where the real property containing the easement is located.

#### **102-75.942 What must agencies consider when granting easements?**

Agencies must—

- (a) Determine the easement's fair market value; and
- (b) Determine the remaining property's reduced or enhanced value because of the easement.

#### **102-75.943 What happens if granting an easement will reduce the value of the property?**

If the easement will reduce the property's value, agencies must grant the easement for the amount by which the property's fair market value is decreased unless the agency determines that the Government's best interests are served by granting the easement at either reduced or without monetary or other consideration.

### **Non-Federal Interim Use of Surplus Property**

#### **102-75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?**

Yes, landholding agencies who possess independent authority to outlease property may allow organizations to use surplus real property awaiting disposal using either a lease or permit, only when—

- (a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency;
- (b) The use and occupancy will not interfere with, delay, or impede the disposal of the property; and
- (c) The agency executing the agreement is responsible for the servicing of such property.

### **Subpart D - Management of Excess and Surplus Real Property**

#### **102-75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?**

GSA's policy is to—

- (a) Manage excess and surplus real property, including related personal property, by providing only those minimum services necessary to preserve the Government's interest and realizable value of the property considered;
- (b) Place excess and surplus real property in productive use through interim utilization, provided, that such temporary use and occupancy do not interfere with, delay, or impede its transfer to a Federal agency or disposal; and
- (c) Render safe or destroy aspects of excess and surplus real property that are dangerous to the public health or safety.

### **Taxes and Other Obligations**

#### **102-75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?**

Except as otherwise provided in 102-75.230, the landholding agency is still responsible for any and all operational costs and expenses or other property-related obligations pending transfer or disposal of the property.

### **Decontamination**

#### **102-75.955 Who is responsible for decontaminating excess and surplus real property?**

The landholding agency is responsible for all expenses to the Government and for the supervision of the decontamination of excess and surplus real property that has been contaminated with hazardous materials of any sort. Extreme care must be exercised in the decontamination, management, and disposal of contaminated property in order to prevent such properties from becoming a hazard to the general public. The

landholding agency must inform the disposal agency of any and all hazards involved relative to such property to protect the general public from hazards and to limit the Government's liability resulting from disposal or mishandling of hazardous materials.

### **Improvements or Alterations**

#### **102-75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?**

Yes, landholding agencies may make improvements or alterations that involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in excess or surplus structures, utilities, installations, and land improvements, in those cases where disposal cannot be accomplished without such improvements or alterations. However, agencies must not enter into commitments concerning improvements or alterations without GSA's prior approval.

### **Protection and Maintenance**

#### **102-75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?**

The landholding agency remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to another Federal agency or disposal. Guidelines for protection and maintenance of excess and surplus real property are in the GSA Customer Guide to Real Property Disposal. The landholding agency is responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

#### **102-75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?**

Generally, the landholding agency is responsible for the cost of protection and maintenance of excess or surplus property until the property is transferred or disposed, but not more than 15 months. However, the landholding agency is responsible for providing and funding protection and maintenance during any delay beyond that 15-month period, if the landholding agency—

- (a) Requests deferral of the disposal beyond the 15 month period;
- (b) Continues to occupy the property beyond the 15 month period to the detriment of orderly disposal; or

(c) Otherwise takes actions that result in a delay in the disposition beyond the 15 months.

**102-75.975      What happens if the property is not conveyed or disposed of during this time frame?**

If the property is not transferred to a Federal agency or disposed of during the 15-month period mentioned in 102-75.970, then the disposal agency must pay or reimburse the landholding agency for protection and maintenance expenses incurred from the expiration date of said time period to final disposal, unless—

- (a) There is no written agreement between the landholding agency and the disposal agency specifying the maximum amount of protection and maintenance expenses for which the disposal agency is responsible;
- (b) The disposal agency's appropriation, as authorized by Congress, does not contain a provision to allow for payment and/or reimbursement of protection and maintenance expenses; or
- (c) The delay is caused by an Executive agency's request for an exception from the 100 percent reimbursement requirement specified in 102-75.205. In this latter case, the requesting agency becomes responsible for protection and maintenance expenses incurred because of the delay.

**102-75.980      Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?**

If there is no written agreement (between the landholding agency and the disposal agency) or no Congressional appropriation to the disposal agency, the landholding agency is responsible for all protection and maintenance expenses, without any right of contribution or reimbursement from the disposal agency.

**Assistance in Disposition**

**102-75.985      Is the landholding agency required to assist the disposal agency in the disposition process?**

Yes, the landholding agency must cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the landholding agency must absorb the entire cost of such actions.

**Subpart E - Abandonment, Destruction, or Donation to Public Bodies**

**§102-75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?**

Yes, subject to the restrictions in this subpart, any Federal agency having control of real property that has no commercial value or for which the estimated cost of continued care and handling exceeds the estimated proceeds from its sale, may—

- (a) Abandon or destroy Government-owned improvements and related personal property located on privately-owned land;
- (b) Destroy Government-owned improvements and related personal property located on Government-owned land (abandonment of such property is not authorized); or
- (c) Donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein.

**Dangerous Property**

**102-75.995 May Federal agencies dispose of dangerous property?**

No, property that is dangerous to public health or safety must be made harmless or have adequate safeguards in place before it can be abandoned, destroyed, or donated to public bodies.

**110-75.995 USDA Dangerous Property**

Before any Disposal Package is transferred to GSA, the Disposal Package must be reviewed and approved by OPPM, including concurrence by EMD.

**Determinations**

**102-75.1000 How is the decision made to abandon, destroy, or donate property?**

No property shall be abandoned, destroyed, or donated by a Federal agency under 102-75.990, unless a duly authorized official of that agency determines, in writing, that—

- (a) The property has no commercial value; or
- (b) The estimated cost of its continued care and handling exceeds the estimated proceeds from its sale.

**102-75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?**

Only a duly authorized official of that agency not directly accountable for the subject property can make the determination.

**102-75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?**

A reviewing authority must approve determinations made under 102-75.1000 before any such disposal, whenever all the property proposed to be disposed of by a Federal agency has a current estimated fair market value of more than \$50,000.

### **Restrictions**

#### **102-75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?**

Yes, Federal agencies must obtain prior concurrence of GSA before donating to public bodies—

- (a) Improvements on land or related personal property having a current estimated fair market value in excess of \$250,000; and
- (b) Land, regardless of cost.

### **Disposal Costs**

#### **102-75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?**

Yes, any public body receiving donated improvements on land or related personal property must pay the disposal costs associated with the donation, such as dismantling, removal, and the cleaning up of the premises.

### **Abandonment and Destruction**

#### **102-75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?**

A Federal agency may not abandon or destroy improvements on land or related personal property unless a duly authorized official of that agency finds, in writing, that donating the property is not feasible. This written finding is in addition to the determination prescribed in §§102-75.1000, 102-75.1005, and 102-75.1010. If donating the property becomes feasible at any time prior to actually abandoning or destroying the property, the Federal agency must donate it.

#### **102-75.1030 May Federal agencies abandon or destroy property in any manner they decide?**

No, Federal agencies may not abandon or destroy property in a manner that is detrimental or dangerous to public health or safety or that will infringe on the rights of other persons.

#### **102-75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?**

Yes, GSA must concur in an agency's abandonment or destruction of improvements on land or related personal property prior to abandoning or destroying such improvements on land or related personal property—

- (a) That are of permanent type construction; or
- (b) The retention of which would enhance the value of the underlying land, if it were to be made available for sale or lease.

**102-75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?**

Except as provided in 102-75.1045, a Federal agency must not abandon or destroy improvements on land or related personal property until after it has given public notice of the proposed abandonment or destruction. This notice must be given in the area in which the property is located, must contain a general description of the property to be abandoned or destroyed, and must include an offering of the property for sale. A copy of the notice must be given to the GSA regional property disposal office for the region in which the property is located.

**102-75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?**

Yes, property can be abandoned or destroyed without public notice if—

- (a) Its value is so low or the cost of its care and handling so great that retaining the property to post public notice is clearly not economical;
- (b) Health, safety, or security considerations require its immediate abandonment or destruction; or
- (c) The assigned mission of the agency might be jeopardized by the delay, and a duly authorized Federal agency official finds in writing, with respect to paragraph (a), (b), or (c) of this section, and a reviewing authority approves this finding. The finding must be in addition to the determinations prescribed in 102-75.1000, 102-75.1005, 102-75.1010, and 102-75.1025.

**102-75.1050 Is there any property for which this subpart does not apply?**

Yes, this subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to 40 U.S.C. 550(c) or (d).

**Subpart F - Delegations**

**Delegation to the Department of Defense (DoD)**

**102-75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?**

GSA delegates to the Secretary of Defense the authority to determine that Federal agencies do not need Department of Defense controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than \$50,000; and to dispose of the property by means deemed most advantageous to the United States.

**102-75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**102-75.1065 When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?**

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**102-75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?**

Yes, the Secretary of Defense may redelegate the authority delegated in 102-75.1055 to any officer or employee of the Department of Defense.

**Delegation to the Department of Agriculture (USDA)**

**102-75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?**

GSA delegates authority to the Secretary of Agriculture to determine that Federal agencies do not need USDA-controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than \$50,000; and to dispose of the property by means deemed most advantageous to the United States.

**102-75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**102-75.1085 When using a delegation of real property disposal authority under this subpart, is USDA required to report excess property to GSA?**

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**102-75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?**

Yes, the Secretary of Agriculture may redelegate authority delegated in 102-75.1075 to any officer or employee of the Department of Agriculture.

**110-75.1090 Delegation to the USDA.**

Heads of Department landholding agencies are delegated the authority as stated in 102-75.1075, except that transfers of land will be conducted by OPPM.

**Delegation to the Department of the Interior Secretary of the Interior?**

GSA delegates authority to the Secretary of the Interior to—

- (a) Maintain custody, control, and accountability for mineral resources in, on, or under Federal real property that the Administrator or his designee occasionally designates as currently utilized, excess, or surplus to the Government's needs;
- (b) Dispose of mineral resources by lease and to administer those leases that are made; and
- (c) Determine that Federal agencies do not need Department of the Interior controlled excess real property and related personal property with an estimated fair market value, including all components of the property, of less than \$50,000; and to dispose of the property by means most advantageous to the United States.

**102-75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?**

Yes, the Secretary of the Interior may redelegate this authority to any officer, official, or employee of the Department of the Interior.

**§102-75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?**

Under this authority, the Secretary of the Interior is responsible for—

- (a) Maintaining proper inventory records, as head of the landholding agency; (b) Monitoring the minerals as necessary, as head of the landholding agency, to prevent unauthorized mining or removal of the minerals;
- (c) Securing any appraisals deemed necessary by the Secretary;
- (d) Coordinating with all surface landowners, Federal or otherwise, to prevent unnecessary interference with the surface use;
- (e) Restoring damaged or disturbed lands after removal of the mineral deposits;
- (f) Notifying the Administrator of General Services when the disposal of all marketable mineral deposits is complete;
- (g) Complying with the applicable environmental laws and regulations, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930);
- (h) Forwarding promptly to the Administrator of General Services copies of any agreements executed under this authority; and
- (i) Providing the Administrator of General Services with an annual accounting of the proceeds received from leases executed under this authority.

### **Native American-Related Delegations**

**102-75.1110      What is the policy governing the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?**

GSA delegates authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education to transfer and to retransfer to each other, upon request, any of the property of each agency that is being used and will continue to be used in the administration of any functions relating to the Native Americans. The term property, as used in this delegation, includes real property and such personal property as the Secretary making the transfer or re-transfer determines to be related personal property. The Departments must exercise the authority conferred in this section following applicable GSA regulations issued pursuant to the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code.

**102-75.1115      Are there any limitations or restrictions on this delegation of authority?**

This authority must be used only in connection with property that the appropriate Secretary determines—

- (a) Comprises a functional unit;
- (b) Is located within the United States; and

(c) Has an acquisition cost of \$100,000 or less, provided that the transfer or retransfer does not include property situated in any area that is recognized as an urban area or place as identified by the most recent decennial census.

**102-75.1120 Does the property have to be Federally screened?**

No, screening is not required because it would accomplish no useful purpose, since the property subject to transfer or retransfer will continue to be used in the administration of any functions relating to Native Americans.

**102-75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?**

Yes, transfers/retransfers under this delegation can be at no cost or without consideration, except—

- (a) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or
- (b) Whenever reimbursement at fair market value is required by subpart B of this part (entitled “Utilization of Excess Real Property”).

**102-75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?**

The Secretary requesting the transfer or retransfer must certify in writing that no funds are available to acquire the property. The Secretary transferring or retransferring the property may make any determination necessary that would otherwise be made by GSA to carry out the authority contained in this delegation.

**102-75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?**

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

**Subpart G - Conditional Gifts of Real Property to Further the Defense Effort**

**102-75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?**

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of Chapter 582—Public Law 537 (July 27, 1954) must notify the appropriate GSA regional property disposal office and must submit to GSA a recommendation indicating whether the Government should accept or

reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions of other laws. Following receipt of such notification and recommendation, GSA must—

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and (b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

**102-75.1145 What action must the Federal agency receiving an offer of a conditional gift take?**

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate acceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

**102-75.1150 What happens to the gift if GSA determines it to be acceptable?**

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

**102-75.1155 May an acceptable gift of property be converted to money?**

GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account that will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

**Subpart H - Use of Federal Real Property to Assist the Homeless**

**Definitions**

**102-75.1160 What definitions apply to this subpart?**

“Applicant” means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

“BLM” means United States Bureau of Land Management, an agency that falls under auspices of DOI.

“Checklist or property checklist” means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

“Classification” means a property’s designation as unutilized, underutilized, excess, or surplus.

“CPAIS” mean Corporate Property Information System, the electronic inventory system of record and is used to track real property by OPPM.

“Day” means one calendar day, including weekends and holidays.

“DOI” means United States Department of the Interior.

“DOJ” means United States Department of Justice

“DOT” means United States Department of Transportation

“Eligible organization” means a State, unit of local government, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

“EMD” means Environmental Management Division of the Office of Procurement and Property Management

“Excess property” means any property under the control of any Executive agency that is not required for the agency’s needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 524.

“GSA” means the United States General Services Administration.

“HHS” means the United States Department of Health and Human Services.

“Homeless” means—

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is— (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a State law.

“HUD” means the United States Department of Housing and Urban Development.

“ICH” means the Interagency Council on the Homeless.

“Landholding agency” means a Federal department or agency with statutory authority to control real property.

“Lease” means an agreement between either HHS for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100-526, 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real

property for a term of at least one year under the conditions set forth in the lease document.

“Non-profit organization” means an organization, 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 nondiscrimination in the provision of assistance.

“NPS” means National Park Service

“OPPM” means the Office of Procurement and Property Management within the Department of Agriculture.

“Permit” means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

“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.

“PMD” means the Property Management Division within the Office of Procurement and Property Management.

“Regional Homeless Coordinator” means a regional coordinator of the Interagency Council on the Homeless.

“Representative of the Homeless” means a State or local government agency, or private non-profit organization that provides, or proposes to provide, services to the homeless.

“Screen” means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

“State Homeless Coordinator” means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with the McKinney- Vento Homeless Assistance Act of 1987, as amended (42 U.S.C. 11320).

“Suitable property” means that HUD has determined that a particular property satisfies the criteria listed in 102-75.1185.

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

“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.

“Unsuitable property” means that HUD has determined that a particular property does not satisfy the criteria in 102-75.1185.

“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.

“USDA” means the Department of Agriculture.

### **Applicability**

#### **102-75.1165 What is the applicability of this subpart?**

(a) This part applies to Federal real property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

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

(1) Machinery and equipment.

(2) 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.

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

(5) Executive Order 12512

(6) Mineral rights interests. (7) Air Space interests.

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

(9) Property interests subject to reversion.

(10) Easements.

(11) 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.

### **Collecting the Information**

#### **102-75.1170 How will information be collected?**

(a) Canvass of landholding agencies. On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under 40 U.S.C. 524, Executive Order 12512, and subpart H of this part. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) Agency annual report. By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) GSA inventory. HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) Change in status. If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the Federal Register. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

### **Suitability Determination**

#### **102-75.1175 Who issues the suitability determination?**

(a) Suitability determination. Within 30 days after the receipt of information from landholding agencies regarding properties that were reported pursuant to the canvass described in 102-75.1170(a), HUD will determine, under criteria set forth in 102-75.1185, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) Scope of suitability. HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) Environmental information. HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in 102-75.1185.

(d) Written record of suitability determination. HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of 102-75.1190(a).

(e) Property determined unsuitable. Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the Federal Register of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) Procedures for appealing unsuitability determinations.

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the Federal Register that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1-800-927-7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the Federal Register.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in 102-75.1160.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to 102-75.1190(a), upon receipt of which HUD will promptly publish the determination in the Federal Register. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

### **Real Property Reported Excess to GSA**

**102-75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?**

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA that has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to 102-75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in 102-75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in 102-75.1180(c) through 102-75.1180(g).

(c) If a landholding agency reports a property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response that includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the Federal Register, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in 102-75.965.

## Suitability Criteria

### **§102-75.1185**      **What are suitability criteria?**

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial, commercial, or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers that provide the heating or power source for the property, and that meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, extensive deterioration, friable asbestos, PCBs, natural hazardous substances such as radon, periodic flooding, sinkholes, or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

(b) [Reserved]

### **Determination of Availability**

#### **102-75.1190      What is the policy concerning determination of availability statements?**

(a) Within 45 days after receipt of a letter from HUD pursuant to 102-75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in 102-75.1185.

(2) In the case of excess property that had previously been reported to GSA—

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

### **Public Notice of Determination**

#### **102-75.1195 What is the policy concerning making public the notice of determination?**

(a) No later than 15 days after the last-45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the Federal Register a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

- (1) Properties that are suitable and available.
- (2) Properties that are suitable and unavailable.
- (3) Properties that are suitable and to be declared excess.
- (4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1-800-927-7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the Federal Register. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the Federal Register a list of all properties reported pursuant to 102-75.1170(b).

(e) HUD will publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the Federal Register will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

### **Application Process**

#### **102-75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?**

(a) Holding period.

- (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a

facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the Federal Register.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-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.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, 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 the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, Room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. 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 particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if—

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) 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.

(b) Application requirements. Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1) Description of the applicant organization. The applicant must document that it satisfies the definition of a “representative of the homeless,” as specified in 102-75.1160. The applicant must document its authority to hold real property. Private, non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) Description of the property desired. The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions, except for, in the case of leasing the property, local zoning regulations.

(3) Description of the proposed program. The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) Ability to finance and operate the proposed program. The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) Compliance with non-discrimination requirements. Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally-Assisted Programs) and implementing regulations; 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; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or disability in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) Insurance. The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

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

(8) 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.

(9) Local government notification. The applicant must indicate that it has informed, in writing, the applicable unit of general local government responsible for providing sewer, water, police, and fire services of its proposed program.

(10) Zoning and local use restrictions. The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant applying for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to 102-75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) Scope of evaluations. Due to the short time frame imposed for evaluating applications, HHS’ evaluation will, generally, be limited to the information contained in the application.

(d) Deadline. Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) Evaluations.

(1) Upon receipt of an application, HHS will review it for completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(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 and the degree to which the available property will be fully utilized.

(iii) Implementation time. The amount of time necessary for the proposed program to become operational.

(iv) Experience. Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities. (v) Financial ability. The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in 102-75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

### **Action on Approved Applications**

#### **102-75.1205 What action must be taken 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. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property pursuant to a lease or permit. (iii) The terms and conditions of the lease or permit document.

(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 leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 102-75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under 40 U.S.C. 550 (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under 40 U.S.C. 550(c) or (d) (education and health uses).

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (d)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement that 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.

(4) Deeds. Surplus property may be conveyed to representatives of the homeless pursuant to 40 U.S.C. 550, and section 501(f) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of 102-75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) Completion of lease term and reversion of title. Lessees and grantees 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 Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

## **Unsuitable Properties**

### **102-75.1210 What action must be taken on properties determined unsuitable for homeless assistance?**

The landholding agency will defer, for 20 days after the date that notice of a property is published in the Federal Register, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA, if a representative of the homeless files an appeal of unsuitability pursuant to 102-75.1175(f)(4). HUD will advise the agency that it should refrain from initiating

disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

### **No Applications Approved**

#### **102-75.1215 What action must be taken if there is no expression of interest?**

(a) At the end of the 60-day holding period described in 102-75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular 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 advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

### **Subpart I - Screening of Federal Real Property**

#### **102-75.1220 How do landholding agencies find out if excess Federal real property is available?**

If agencies report excess real and related personal property to GSA, GSA conducts a “Federal screening” for the property. Federal screening consists of developing a “Notice of Availability” and circulating the “Notice” among all Federal landholding agencies for a maximum of 30 days.

#### **102-75.1225 What details are provided in the “Notice of Availability”?**

The “Notice of Availability” describes the physical characteristics of the property; it also provides information on location, hazards or restrictions, contact information, and a date by which an interested Federal agency must respond in writing to indicate a definite or potential need for the property.

#### **102-75.1230 How long does an agency have to indicate its interest in the property?**

Generally, agencies have 30 days to express written interest in the property. However, sometimes GSA has cause to conduct an expedited screening of the real property and the time allotted for responding is less than 30 days. The Notice of Availability always contains a “respond by” date.

**102-75.1235      Where should an agency send its written response to the “Notice of Availability”?**

Look for the contact information provided in the Notice of Availability. Most likely, an agency will be directed to contact one of GSA’s regional offices.

**102-75.1240      Who, from the interested landholding agency, should submit the written response to GSA’s “Notice of Availability”?**

An authorized official of the landholding agency must sign the written response to the Notice of Availability. An “authorized official” is one who is responsible for acquisition and/or disposal decisions (e.g., head of the agency or official designee).

**102-75.1245      What happens after the landholding agency properly responds to a “Notice of Availability”?**

The landholding agency has 60 days (from the expiration date of the “Notice of Availability”) to submit a formal transfer request for the property. Absent a formal request for transfer within the prescribed 60 days, GSA may, at its discretion, pursue other disposal options.

**102-75.1250      What if the agency is not quite sure it wants the property and needs more time to decide?**

If the written response to the “Notice of Availability” indicates a potential need, then the agency has an additional 30 days (from the expiration date of the “Notice of Availability”) to determine whether or not it has a definite requirement for the property, and then 60 days to submit a transfer request.

**102-75.1255      What happens when more than one agency has a valid interest in the property?**

GSA will attempt to facilitate an equitable solution between the agencies involved. However, the Administrator has final decision making authority in determining which requirement aligns with the Federal Government’s best interests.

**102-75.1260      Does GSA conduct Federal screening on every property reported as excess real property?**

No. GSA may waive the Federal screening for excess real property when it determines that doing so is in the best interest of the Federal Government. Below is a sample list of some of the factors GSA may consider when making the decision to waive Federal screening. This list is a representative sample and is not all-inclusive:

- (a) There is a known Federal need;
- (b) The property is located within the boundaries of tribal lands;

- (c) The property has known disposal limitations precluding further Federal use (e.g., title and/or utilization restrictions; reported excess specifically for participation in the Relocation Program; reported excess for transfer to the current operating contractor who will continue production according to the terms of the disposal documents; directed for disposal by law or special legislation);
- (d) The property will be transferred to a “potentially responsible party” (PRP) that stored, released, or disposed of hazardous substances at the Government-owned facility;
- (e) The property is an easement;
- (f) The excess property is actually a leasehold interest where there are Government-owned improvements with substantial value and cannot be easily removed;
- (g) Government-owned improvements on Government-owned land, where the land is neither excess nor expected to become excess; or
- (h) Screening for public benefit uses, except for the McKinney-Vento homeless screening, for specific property disposal considerations (see 102-75.351).

**102-75.1265      Are extensions granted to the Federal screening and response timeframes?**

Generally, no. GSA believes the timeframes are sufficient for agencies to make a decision and respond. Requests for extensions must be strongly justified and approved by the appropriate GSA Regional Administrator. For example, agencies may request an extension of time to submit their formal transfer request if they are not promptly provided GSA’s estimate of FMV after submission of the initial expression of interest. Agencies requesting extensions must also submit an agreement accepting responsibility for providing and funding protection and maintenance for the requested property during the period of the extension until the property is transferred to the requesting agency or the requesting agency notifies GSA that it is no longer interested in the property. This assumption of protection and maintenance responsibility also applies to extensions associated with a requesting agency’s request for an exception from the 100 percent reimbursement requirement (see 102-75.205).

**102-75.1270      How does an agency request a transfer of Federal real property?**

Agencies must use GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

**102-75.1275      Does a requesting agency have to pay for excess real property?**

Yes. GSA is required by law to obtain full fair market value (as determined by the Administrator) for all real property (see 102-75.190), except when a transfer without reimbursement has been authorized (see 102-75.205). GSA, upon receipt of a valid expression of interest, will promptly provide each interested landholding agency with an estimate of fair market value for the property. GSA may transfer property without

reimbursement, if directed to do so by law or special legislation and for the following purposes:

- (a) Migratory Bird Management under Pub. L. 80-537, as amended by Pub. L. 92-432.
- (b) Wildlife Conservation under Pub. L. 80-537. (c) Federal Correctional facilities.
- (d) Joint Surveillance System.

**102-75.1280      What happens if the property has already been declared surplus and an agency discovers a need for it?**

GSA can redesignate surplus property as excess property, if the agency requests the property for use in direct support of its mission and GSA is satisfied that this transfer would be in the best interests of the Federal Government.

**102-75.1285      How does GSA transfer excess real property to the requesting agency?**

GSA transfers the property via letter assigning “custody and accountability” for the property to the requesting agency. Title to the property is held in the name of the United States; however, the requesting agency becomes the landholding agency and is responsible for providing and funding protection and maintenance for the property.

**102-75.1290      What happens if the landholding agency requesting the property does not promptly accept custody and accountability?**

- (a) The requesting agency must assume protection and maintenance responsibilities for the property within 30 days of the date of the letter assigning custody and accountability for the property.
- (b) After notifying the requesting agency, GSA may, at its discretion, pursue other disposal options.