

**FINANCIAL AND PROGRAM POLICIES REGARDING ENHANCED-USE  
LEASING PROGRAM**

**1. REASON FOR ISSUE:** This revision of Department of Veterans Affairs (VA) Directive 7415 issues the changes in VA financial policy for Enhanced-Use leases to make it consistent with the Veterans' Millennium Health Care and Benefits Act.

**2. SUMMARY OF CONTENTS**

a. Paragraph 2(a)(9) is changed to designate that all monetary proceeds realized from Enhanced-Use leases shall be promptly deposited into the Health Services Improvement Fund.

b. All references to the Nursing Home Care Revolving Fund (NHCR) are replaced with the Health Services Improvement Fund.

c. The Veterans' Millennium Health Care and Benefits Act, Public Law 106-117, is added as a reference under paragraph 4.

**3. RESPONSIBLE OFFICE:** The Chief Facilities Management Officer (18) is responsible for the contents of this Directive.

**4. RELATED HANDBOOK:** VA Handbook 7415.1, Financial and Program Procedures Regarding Enhanced-Use Leasing Program (to be published).

**5. RESCISSIONS:** VA Directive 7415.1 dated March 9, 1999.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS:**

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## FINANCIAL AND PROGRAM POLICIES REGARDING ENHANCED-USE LEASING PROGRAM

**1. PURPOSE.** This directive establishes Departmentwide policies for program responsibilities and the financial management of Enhanced-Use leases. These policies provide for management accountability and controls and guidance for the use and management of funds and other types of financial benefits obtained through Enhanced-Use leases.

**2. POLICY.** This directive addresses three distinct subject areas: programmatic policies and execution of Enhanced-Use leases; administrative reimbursement; and establishment and management of independent trusts. Each area has guidelines for the policies applicable to it.

(a) **Programmatic Policies and Execution of Enhanced-Use Leases**

(1) Title 38 United States Code (U.S.C.) Section 8162, authorizes the Secretary of Veterans Affairs to outlease real property, under the control and/or jurisdiction of the Secretary, and to receive in return, monetary or "in-kind" consideration (i.e., the provision of goods, facilities, construction, or services of benefit to the Department), as all or part of the fair consideration for outleasing the property.

(2) Each Enhanced-Use lease shall have a business plan that addresses the following: objectives of the proposed Enhanced-Use lease; the business concept; an analysis of business, market and budgetary considerations; compatibility of the proposal with the existing and proposed Department of Veterans Affairs (VA) activities; potential options and alternatives; operational and financial execution responsibilities; projected timelines and any other relevant information.

(3) Enhanced-Use leasing projects must be approved by the appropriate Program Office head which includes: the Under Secretaries for Health, Benefits, and Memorial Affairs; the Assistant Secretary for Financial Management for staff office field and Supply Fund projects; and the Assistant Secretary for Human Resources for VA Central Office projects.

(4) The Secretary's approval is required for all Significant Enhanced-Use leases. A "Significant" lease is defined as a project whereby any of the following conditions exist:

(a) The net present value of the proposed project requires review and approval by the Capital Investment Board;

(b) A lease acquisition exceeds the fair market annual rental of \$300,000; or

(c) A new presence is established. A new presence is defined as a medical care site that did not previously exist.

**NOTE:** *Some Significant lease projects will require intensive review by VA offices to ensure compliance with public and/or private financial or legal structures.*

(5) At major project stages, concurrence must be obtained from appropriate officials including the: Network, Regional, and/or Area Director; Chief Facilities Management Officer; General Counsel; Program Office head; Veterans Health Administration (VHA) Chief Network Officer; Program Office Chief Financial Officer (CFO); and the Assistant Secretary for Financial Management. Major project stages include:

- (a) Business Plan;
- (b) Notice of Designation of Property for Enhanced-Use;
- (c) Notice of Intent to Execute and Award an Enhanced-Use Lease;
- (d) Delegation of Authority to Enter into an Enhanced-Use Lease; and
- (e) Notice to Dispose of Property Subject to an Enhanced-Use Lease.

(6) Upon the Secretary's approval of the Notice of Designation for Significant Enhanced-Use leases, the proposal shall be forwarded to the Office of Management and Budget (OMB) for review, prior to publishing in the Federal Register and providing the required Congressional notification.

(7) All Enhanced-Use leasing projects not designated as Significant shall be subject to the same review, concurrence, and approval requirements as Significant Enhanced-Use projects, except for OMB review. Congressional notification is also required.

(8) Each Enhanced-Use lease must sponsor a public hearing, and the notifications shall be in accordance with 38 U.S.C. Section 8163.

(9) All monetary proceeds realized from Enhanced-Use leases shall be promptly deposited into a Treasury Department suspense account. The method and type of deposit shall be negotiated with the lessee. Funds received by the Department and remaining after deductions of approved expenses shall be promptly deposited into the Health Services Improvement Fund.

**b. Administrative Reimbursement**

(1) Program Offices often incur expenses in developing and entering into Enhanced-Use leases. These expenses result from both structuring a project that meets the Department's business objectives as well as the necessary legal requirements. Title 38 U.S.C. Section 8165 (b) permits the Department to deduct necessary amounts from any Enhanced-Use proceeds to reimburse the account from which expenses were incurred in connection with such lease. (Procedures for reimbursement are addressed in the Handbook.)

(2) Current year proceeds should be deposited in the accounts that had incurred expenses in the same fiscal year. If expenses occurred in a different fiscal year, the proceeds should be deposited in the Health Services Improvement Fund.

(3) Reimbursements for administrative expenses must be apportioned prior to obligating.

c. **Establishment and Management of Independent Trusts**

(1) Depending upon the terms of the Enhanced-Use lease, in-kind consideration may be provided directly by the lessee or through a third party including an independent trust. Once established, the independent trust would assume the lessee's obligations to perform the in-kind consideration, as agreed to in the lease negotiations. Approval from the Program Office head and the General Counsel is required for establishing trusts to provide in-kind consideration.

(2) Each Program Office entering into an Enhanced-Use lease that results in an independent trust shall establish a trust board (or boards, if appropriate). Board membership shall be as directed by the Program Office head and will include a member of the General Counsel's office. **NOTE:** *Board duties are defined under Responsibilities, subparagraph 3.d.* Technical advisors, which include the Program Office CFO, the Chief Facilities Management Officer, and a representative from the Office of the Assistant Secretary for Financial Management, are responsible for programmatic policies and technical assistance.

(3) Each trust board shall establish an accounting system that will provide for their review of all trustee reports and financial statements of trust accounts. The board shall submit, in an approved standard format, a statement of the status of the trust to the Program Office CFO on a quarterly basis. The CFO shall compile such reports from each trust board and submit them on a quarterly basis, in addition to an annual statement on the financial status of the trusts, to the Assistant Secretary for Financial Management and the Chief Facilities Management Officer for review. (See Handbook for a sample of the Accounting Report.)

(4) All requests for in-kind consideration from a trust require compliance with the following:

(a) The authorizing Enhanced-Use lease and trust agreement;

(b) The Department's strategic principles, objectives and plans;

(c) Applicable laws and policies administered by VA which govern activities receiving benefit from Enhanced-Use leases; and

(d) A limitation of 70 percent of the available balance of the trust, taking into consideration all outstanding projects and associated contingencies.

(5) VA shall provide a specific request for disbursing the in-kind consideration from the trust. It is important to note that it is the lessee and not the Department that establishes and administers the trust account. As a result, VA cannot control the funds in the trust. However, VA can direct the disbursement from the trust to obtain the negotiated in-kind consideration. This is to ensure uniformity in application and provide appropriate financial management oversight for these types of arrangements.

(6) Each Program Office head, or designee, acting in accordance with the provisions of this Directive and upon recommendation of the board, is authorized to make the necessary certifications to the trustee for the performance of specified in-kind consideration and the disbursement of trust funds. (See Handbook for a sample of the Disbursement form.)

(7) Requests for in-kind consideration and disbursement shall be made only in the capacity as a beneficiary of the trust, and not in any other capacity, including that of an executive branch department of the United States. It is the responsibility of the trustee or its agent, to certify acquisition and delivery of all in-kind consideration is for official, VA use only, and is in accordance with Federal and other applicable laws.

(8) In instances where the available balance in the trust is no longer financially viable to address outstanding program requirements, the responsible Program Office shall request the Office of General Counsel terminate the trust. Remaining funds shall be forwarded to the Program Office CFO to be disbursed as a monetary proceed.

(9) In instances where a request from a trust account concerns the acquisition of space or construction of facilities that would constitute a minor or major construction project, or a lease acquisition exceeding a fair market annual rental of \$300,000, or a new presence, such requests shall be submitted in accordance with existing Departmental policies pertaining to the specific project categories. In addition, such requests will require additional notification to OMB or others as directed by the Secretary.

(10) Administrative expenses incurred by the Department in connection with the performance of its responsibilities under this Directive shall be reimbursed from the suspense account when monetary proceeds are received as a result of an Enhanced-Use lease. They shall not be paid from the trust.

### 3. RESPONSIBILITIES

a. **Program Office.** Each Program Office shall be responsible for decisions and efforts regarding mission objectives and requirements, the impact of non-Departmental Enhanced-Use activities conducted on VA-controlled property, project planning and funding determinations, and establishment of project priorities for their respective Enhanced-Use leasing projects.

b. **Chief Facilities Management Officer.** The Chief Facilities Management Officer shall undertake all necessary actions for implementing the Enhanced-Use leasing program in VHA. Responsibilities include the following: drafting all necessary

Enhanced-Use leasing policies; preparing notification and other documentation requirements; directing necessary feasibility studies and other reviews; coordinating with appropriate Department offices and activities, and other Federal and non-Federal entities; and finalizing the award of Enhanced-Use lease contracts.

c. **CFO.** CFOs shall be responsible for resolving disputes associated with Enhanced-Use leases. They also ensure the negotiated in-kind consideration has an appropriate level of financial oversight, and reporting requirements are established. Additionally, CFOs shall submit an annual statement on the status of the Health Services Improvement Fund and all reimbursements pertaining to the Enhanced-Use leasing program, by individual project, to the Assistant Secretary for Financial Management and to the Chief Facilities Management Officer.

d. **Trust Board Members.** Trust board members are responsible for the following actions:

(1) Providing recommendations to each Program Office head, or designee, on matters concerning requests for in-kind consideration and disbursement of trust funds;

(2) Ensuring formal actions and recommendations of the trust board are in writing; and

(3) Ensuring all trust transactions are reported on a quarterly basis to the Assistant Secretary for Financial Management and the Chief Facilities Management Officer.

#### 4. REFERENCES

a. Public Law 106-117, the Veterans' Millennium Health Care and Benefits Act.

b. Title 38 U.S.C. Section 8162, Subchapter V, Enhanced-Use Leases of Real Property, August 14, 1991, as amended by Public Law 102-86.

#### 5. DEFINITIONS

a. **Apportionments.** The authority OMB provides to allow agencies to obligate funds and make payments out of Treasury.

b. **Business Plan.** A plan that defines the scope of a project and provides an analysis of all associated costs and returns on investments having an impact on a proposal.

c. **Capital Investment Board.** The Board responsible for approving all VA capital investments, whose members include: the Deputy Secretary; the Deputy Under Secretary for Management (VBA); the General Counsel; the Deputy Under Secretary for Health; the Under Secretary for Memorial Affairs; the Assistant Secretaries for Planning and Analysis, Information and Technology; Financial Management and Congressional Affairs.

d. **In-kind Consideration.** The provision of goods, facilities, construction, or services of benefit to the Department, that can be obtained in exchange for entering into an Enhanced-Use lease.

e. **Notice of Designation.** A letter submitted by the Secretary to VA Congressional Committees proposing to designate an underutilized parcel of real property, no longer needed by the Department, as an Enhanced-Use lease.

f. **Trust.** A contractual agreement between the lessor and VA, whereby in-kind consideration is placed into an escrow account for future disbursement in exchange for the outlease.