

## **Managerial Flexibility Act of 2001**

### **Section-by-Section Summary**

#### **TITLE I - FEDERAL EMPLOYEE MANAGEMENT REFORMS**

##### **SUBTITLE A - FEDERAL EMPLOYMENT RESTRUCTURING ASSISTANCE**

This proposal would create a permanent Government-wide authority for voluntary separation incentives ("buyouts"). Buyouts have been available under various statutory authorities since 1992. Over the years, they have proven to be an extremely effective tool for agencies facing major downsizing or restructuring. They were a key tool in efforts to reduce the Federal workforce by over 370,000 in the last seven years and to accomplish base realignments and closures. The Office of Personnel Management (OPM), the General Accounting Office, and the Congressional Budget Office agree that buyouts are more cost-effective and less disruptive than reductions in force (RIFs). They reduce the number of involuntary separations when an agency is downsizing or restructuring. Buyouts are more manageable and flexible than RIFs, protect diversity, and minimize damage to morale brought about by RIFs. Over the last few years more than 26 different buyout laws have been enacted. Two of these were time-limited Government-wide authorities, and the remainder covered specific agencies.

The proposal includes all of the safeguards and features that have allowed buyouts to be useful and effective for agencies and attractive to employees while still saving the taxpayers money. These safeguards include: (1) requiring an agency to submit a detailed plan to the Office of Management and Budget (OMB) describing the intended use of buyouts and how the agency will be streamlined; (2) reducing an agency's full-time equivalent (FTE) employment level by one position for each employee who receives a buyout; and (3) requiring that any employee who received an incentive and then accepted any paid employment with the Government, or under a personal services contract with the Government, within five years after separating, would have to repay the entire amount of the incentive before the first day of the reemployment.

#### **Sec. 101. Voluntary separation incentives**

This section would create a new subchapter II in chapter 35 of title 5 U.S.C., to permanently authorize buyouts.

The new 5 U.S.C. 3521 would provide definitions of "agency" and "employee." This section would exclude certain employees from eligibility for a buyout. Among these exclusions are reemployed annuitants, employees eligible for disability retirement, employees about to be separated for misconduct or unacceptable performance, and employees who have previously received a buyout from the Federal Government.

The amendments to Section 1115 and 1116 requires that payments to the Fund for the Department of Defense uniformed services are from amounts appropriated for military personnel accounts, rather than the Defense Health Program.

The further amendment to section 1116(a) and the addition of section 1116(c) to the existing law - National Defense Authorization Act for Fiscal Year 2001, Section 713 - would charge to the non-defense uniformed services the accruing cost of retiree health benefits for their respective uniformed service.

New Section 1118 provides that if actuarial determinations are not available in time for budget preparation during the first year of implementation, estimates made under Section 1115 will be the actual payments contributed to the Fund. The original unfunded liability as defined in Section 1115 will be adjusted to correct for the difference.

### **Sec. 213. Effective date**

Section 213 provides that the subtitle shall take effect upon enactment with respect to fiscal years beginning after 2002, except as otherwise provided.

## **TITLE III - FEDERAL PROPERTY ASSET MANAGEMENT REFORMS**

The Federal Property and Administrative Services Act of 1949 (Property Act), as amended (40 U.S.C. 471 et seq.), is the law of general application governing real and personal property acquired to carry out Federal missions and programs. The Federal Government owns or controls over 24 million acres of land and facilities, which have been acquired for use and operation by Federal agencies in support of their missions. Since 1949, the Property Act has provided the foundation for the management and disposal of these properties as well as for surplus personal property.

This title reforms the Property Act by addressing all phases of an asset's life cycle and would support an integrated portfolio-wide perspective for overall property management decision-making by providing incentives for managing Federal property by authorizing agencies to:

(1) exchange or transfer unneeded property with other Federal agencies; (2) sublease unexpired portions of government-leased property; and (3) outlease assets that must remain in Federal ownership, including underutilized portions of non-excess property to ensure full utilization. Further, this title would not alter existing authorities for properties under the current Property Act structure nor would it alter authorities that were granted under other statutes. Rather, it would provide incentives and flexibility in addition to those authorities and grant agencies the necessary tools to effectively and efficiently manage their assets.

### **Sec. 301. Definitions**

This section amends Section 3 of the Property Act by adding a definition for the term "landholding agency." This term means any Federal agency that, by specific or general statutory authority, has jurisdiction, custody, or control over real property and would exclude agencies when they are acting on behalf of a third party during the conveyance process for a public benefit purpose.

#### **SUBTITLE A - LIFE CYCLE PLANNING AND MANAGEMENT**

New Section 213 amends Title II of the Property Act by requiring the GSA Administrator, along with the heads of the landholding agencies, to establish a set of real and personal property asset management principles as a guide in the real and personal property decision-making process. It also establishes specific principles that must be used with respect to the outlease of Federal property through the use of public-private partnerships. Additionally, it requires the GSA Administrator to establish performance measures to determine the effectiveness of Federal real property management.

New Section 214 amends Title II of the Property Act and requires the head of each landholding agency to designate a Senior Real Property Officer (SRPO) to oversee all real property asset management activities. The agency SRPO would work with the Chief Financial Officer, Chief Information Officer, and Chief Human Resources Officer to integrate facilities, technology, human resources, and financial management considerations into agency strategic planning. Also, it would provide that the agency SRPO first give consideration to available Federal real property holdings prior to a Federal agency acquiring any interest in real property from a non-Federal source.

#### **SUBTITLE B - ENHANCED AUTHORITIES FOR REAL PROPERTY ASSET MANAGEMENT**

##### **Sec. 311. Enhanced asset management tools**

Section 311 amends the Property Act by adding at the end of Title II the following new sections to make several new enhanced asset management tools available to landholding agencies.

The new Section 215 of Title II of the Property Act establishes criteria for use of the new asset management tools. That criteria includes determining if the use of the asset management tool: (1) supports the goals and objectives in the agency's Strategic Plan and the asset management plan required in section 214 of the Property Act as amended; (2) is economical, cost effective, and in the best interest of the United States for the use of the real property; and (3) is documented in a business plan that analyzes all reasonable options for use of the property and takes into account provisions of other applicable law (e.g., the McKinney-Vento Homeless Assistance Act and the National Environmental Policy Act).

The new Section 216 of Title II of the Property Act authorizes the use of asset management tools and sets requirements for how and when they should be used.

Subsection 216(a) authorizes Federal agencies to be able to acquire replacement real property by exchange or transfer in participation with another agency under mutually agreeable terms.

Subsection 216(b) provides that a Federal agency would be able to acquire replacement real property interests by selling or exchanging real property assets to or with any non-Federal source. A transaction under this authority would be subject to the following requirements:

- (1) compliance with applicable law concerning Federal agency acquisitions of real property;
- (2) making the property available for transfer or exchange with other Federal agencies; and
- (3) receiving fair market value consideration for the property sold or exchanged, which may include future consideration such as construction of a building, development rights, fee interests, or leasehold interests.

Subsection 216(c) allows a Federal agency to be able to make unexpired portions of leases of real property available for interim uses. Such uses could be enabled by a lease, license, permit, or similar instrument issued to another Federal agency or a non-Federal entity.

Subsection 216(d) authorizes a Federal agency to be able to make underutilized portions of Government-owned real property available through outlease agreements with a Federal agency or a non-Federal entity. These outlease agreements could be in the form of a partnership, cooperative venture, limited liability company, or other business arrangement. A decision to outlease property would be subject to the head of the agency once he or she determines that:

- (1) there is no long-term mission requirement for the property (but the Federal government is not permitted to dispose of it) or there is a continuing long-term mission requirement to retain the property; and
- (2) the use of the property by the prospective lessee will not be inconsistent with the agency's mission. Additionally, any outleasing agreement shall not be for more than 50 years.

This section also authorizes agencies to dispose of leased property if the head of the agency determines, during the term of an outlease involving the development or substantial rehabilitation/renovation of a Federal asset in partnership with a non-Federal entity, that the property is no longer needed. This authority would not affect any authorities currently in statute that authorize agencies to outlease property.

The new Section 217 of Title II of the Property Act provides for the receipt of cash or cash equivalents, in-kind assets, services, future consideration, or any combination of those values from the operation of one of the enhanced asset management tools authorized in section 216.

The new Section 218 of Title II of the Property Act requires Federal agencies to submit business plans to OMB and appropriate committees of the Congress concerning each transaction under section 216 that involves a sale, exchange, or outlease to a non-Federal party where the asset has a value of more than \$2 million.

### **Sec. 312. Repeal of section 312 of the Federal Property and Administrative Services Act**

Section 312 of the draft bill repeals section 321 of the Act of June 30, 1932, 47 Stat. 412 (40 U.S.C. 303b).

### **Sec. 313. Disposal of surplus property**

Section 313 would amend subsection 203(b) of the Property Act concerning the authority for the care and handling and disposition of surplus property. The provision requires that the GSA Administrator delegate, upon the written request of the head of the landholding agency, disposal authorities for surplus real and related personal property.

## **SUBTITLE C - INCENTIVES FOR REAL AND PERSONAL PROPERTY MANAGEMENT IMPROVEMENT**

### **Sec. 321. Proceeds from transfer or disposition of property**

Section 321 amends section 204 of the Property Act (40 U.S.C. §485) to allow agencies to retain the bulk of the net proceeds from real property transactions.

It also amends section 204 of the Property Act to authorize the establishment of individual agency capital asset accounts to fund the Federal agencies' capital transactional needs. The balances in each agency's capital account would be made available until expended without further appropriation action. Such account would consist of funds generated from real property transactions. Funds in an agency account would generally be available for such capital asset projects as acquisitions of new facilities and equipment, major construction, capital improvements; non-reoccurring maintenance including renovations, alterations, expansions, environmental remediations; and disposition expenses. In addition, agencies would be required to annually submit with the President's budget a detailed account of all real property transactions carried out during the previous fiscal year and of receipts and disbursements from the agency's capital asset account.

This section authorizes landholding agencies to be reimbursed for their full direct and indirect costs in disposing of property, from the monetary proceeds of real property dispositions or other available resources, including the agency's capital asset account.

Section 321 also amends subsection 204(i) of the Property Act to authorize an agency selling personal property to retain the proceeds of a sale such in amounts as are necessary to cover the full, direct and indirect, disposal costs.

**Sec. 322. Relationship to other agencies' authorities to use disposal proceeds**

Section 322 states that the authority to retain proceeds granted under section 321 would not supersede other provisions of Federal law.

**Sec. 323. Impact on other authorities to use disposal proceeds**

Section 323 authorizes agencies to retain the proceeds from real property dispositions rather than providing the funds to other funding sources, such as the Land and Water Conservation Fund.

**Sec. 324. Using a share of sale proceeds to maintain historic Treasury receipts**

Section 324 requires agencies to transfer to the Treasury an amount equal to the FY 2002 baseline estimate of surplus real property sales receipts for FYs 2002 through 2006. OMB is required to notify the affected agencies and House and Senate Appropriation Committees of the allocation by agency within 30 days of enactment of this Act. If an agency realizes less sale proceeds than its allocation for a fiscal year, it will transfer all of the actual sale proceeds to the Treasury, and its allocation for the subsequent year will be increased by the shortfall. If by September 30, 2006, an agency has transferred less to Treasury than its cumulative five-year allocation, the agency will be required to transfer the difference out of funds otherwise available to the agency. Agencies will be allowed to retain and use any surplus sale proceeds that exceed the allocation made by OMB.

**SUBTITLE D - STREAMLINED AND ENHANCED DISPOSAL AUTHORITIES**

**Sec. 331. Including nonprofit organizations as eligible donees**

Section 331 amends subsection 203(k)(3) of the Property Act to add qualified nonprofit institutions to the set of entities eligible to receive surplus property for historic monument purposes.

**Sec. 332. Elimination of certain negotiated sale requirements**

Section 332(a) amends subsection 203(e) of the Property Act by modifying certain requirements concerning negotiated sales of surplus real and personal property in order to eliminate obsolete and unnecessary limitations and therefore providing increased flexibility on negotiated sales of both real and personal property.

Section 332(a) amends Subsection 203(e)(6) by repealing the current requirements and adding new ones for the preparation of explanatory statements and annual reports to Congress concerning negotiated sales of surplus personal property. In the case of surplus real property, the provision makes the negotiated sale value threshold of the surplus real property above the explanatory statements threshold and equal to the threshold value prescribed in section 218 of the Property Act as amended by Subtitle B of this title. Consistent with personal property, the annual real property report to Congress required under Section 203(e)(6) would be eliminated.

Section 332(b) adds a subsection (s) to section 203 of the Property Act, which would eliminate that any priority consideration be given to a specific public benefit conveyance.

### **Sec. 333. Exchange and sale of personal property**

Section 333 amends subsection 201(c) of the Property Act (40 U.S.C. 481(c)) by: (1) authorizing the acquisition of personal property and/or related services through an exchange/sale of personal property; (2) repealing the current provision that allows negotiated sales of such property only when the reasonable value involved in the contract does not exceed \$500 or when otherwise authorized by law; and (3) making the sale of personal property under the exchange/sale authority subject to the same conditions that apply to the sale of surplus personal property under Subsection 203(e) of the Property Act.

### **Sec. 334. Expansion of abandonment authority**

Section 334 amends subsection 202(h) of the Property Act by expanding the current authority for abandonment of property to property which has no commercial value or of which the estimated costs of continued care and handling would exceed the estimated proceeds from its sale. The new authority allows agencies to abandon property to both public and private organizations when such property has no value.

### **Sec. 335. Clarifying certain donation authorities**

Section 335 amends subsection 203(j) of the Property Act by making educational activities of special interest eligible to acquire both civilian agency and Department of Defense property through their local State agencies for surplus property.

### **Sec. 336. Streamlining consideration of surplus real property for homeless assistance**

Section 336 would streamline and reform the process whereby Federal real property is considered for use to assist the homeless by making several amendments to section 501 of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

Section 336(a)(1) and (2) would limit agency quarterly reporting on Federal properties to the Department of Housing and Urban Development (HUD) to cover only those properties that have not been previously reported to HUD in a prior quarterly period.

Paragraph (3) would reduce the deadline for agencies to submit "notices of intent" concerning property availability from 45 days to 30 days.

Paragraphs (4) and (5) would limit the HUD quarterly publications in the Federal Register to cover only properties that have not been previously published in a prior quarterly period.

Paragraph (6) would reduce the administrative and Federal Register publication costs for HUD and would repeal certain reporting and publication requirements.

Paragraph (7) would require that the list of available properties be published on a website maintained by the Secretary of HUD, and that the local Continuum of Care (CoC) organization for homeless assistance where the property is located (or the State if a CoC is not available) be notified of the information on the list.

Paragraph (8) extends the holding period in which properties are available solely for the purpose of assisting the homeless from 60 days to 90 days.

Paragraph (9) allows applicants to submit a written expression of interest in properties published quarterly to HHS after the 90-day proposed holding period has expired if the property is still available to assist the homeless.

Paragraph (10) requires HHS to give a preference to applications for properties that contain a certification that their proposal is consistent with the local CoC strategy for homeless assistance.

Paragraph (11) adds language to the McKinney-Vento Homeless Act that states that the priority of consideration to obtain property will only apply if HHS receives a written notice of intent with the 90-day proposed holding period as described in paragraph 8.

Paragraph (12) changes the heading in Section 501(h) of the McKinney-Vento Homeless Act to reflect the change in paragraph (11) to add other property exemptions unrelated to the base closure process.

Paragraph (13) exempts from Section 501 of the McKinney-Vento Homeless Act, buildings and property that are in a secured area for national defense purposes or inaccessible by road and can be reached only by crossing private property.

Subsection 13(b) requires HUD, within 30 days of enactment of this Act, to survey landholding agencies to determine whether the properties included in the last comprehensive list of properties



published pursuant to section 501(c)(1)(A) of the McKinney-Vento Act remain available for application for use by the homeless. Such properties would be required to remain available for application for use to assist the homeless in accordance with sections 501(d) and 501(e) (as amended by subsection (a) of this section) as if such properties had been published under section 501(c)(1)(A)(ii).

## **SUBTITLE E - MISCELLANEOUS**

### **Sec. 341. Scope and construction**

Section 341 emphasizes that unless specifically expressed within, this title neither itself imposes, nor places in the Property Act, any provision that is to be construed to preempt or otherwise contest with any preexisting statute that authorizes a Federal agency to manage or engage in transactions involving real property.

### **Sec. 342. Severability**

### **Sec. 343. No waiver**

### **Sec. 344. Agency discretion**

### **Sec. 345. Effective date**

The remaining sections in this subtitle address statutory housekeeping subjects of severability, waiver, the exercise of agency discretion, and the effective date of the Title, and requires the General Accounting Office to report to Congress no later than five years from the date of enactment of this Title on the use by Federal agencies of the authorities provided by this Title.