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Testimony

Before the Senate Committee on Veterans'  
Affairs

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## VA REAL PROPERTY

# VA Emphasizes Enhanced- Use Leases to Manage Its Real Property Portfolio

Statement of David Wise, Director  
Physical Infrastructure Issues



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# Highlights

Highlights of [GAO-09-776T](#), a testimony before the Senate Committee on Veterans' Affairs

## Why GAO Did This Study

The Department of Veterans Affairs (VA) is one of the largest federal land-holding agencies and operates one of the largest health care-related real estate portfolios in the nation. However, many of VA's facilities were built more than 50 years ago and are underutilized or unused. Congress has provided VA with certain authorities, such as enhanced-use lease (EUL) authority, enabling the agency to lease or dispose of these properties. This statement focuses on (1) VA's authority to enter into EULs, (2) how VA has used its EUL authority, and (3) the relationship between VA's authorities and the amount of real property that is retained or sold. This statement is based on GAO's February 2009 report on federal agencies' authorities and actions regarding EULs and sale of unneeded real property ([GAO-09-283R](#)). To prepare that report, GAO analyzed the authorities and actions of the 10 largest federal land-holding agencies, including VA, to enter into EULs and sell unneeded real property. GAO reviewed VA's legal authorities related to EULs, the sale of real property, and retention of proceeds from EULs and sales; collected data on VA's use of EULs; and visited a property that VA is leasing under an EUL.

View [GAO-09-776T](#)  
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## VA REAL PROPERTY

### VA Emphasizes Enhanced-Use Leases to Manage Its Real Property Portfolio

#### What GAO Found

VA has statutory authority to enter into enhanced-use leases (EUL), which are typically long-term agreements with public and private entities for the use of federal property in exchange for cash, in-kind consideration, or both. The agency may enter into EULs for underutilized or unused real property for up to 75 years and use the proceeds for a variety of purposes, including developing additional EULs, providing medical care, and constructing and improving VA medical facilities. In-kind consideration may include goods and services that benefit VA, such as provision of office, storage, or other usable space; or construction, repair, remodeling, maintenance, or other physical improvements to VA facilities.

VA has used its EUL authority to reduce the amount of its underutilized and unused property, and to receive financial and nonfinancial benefits. VA reported that it disposed of 50 buildings and land in fiscal year 2008 using its EUL authority. According to VA, the agency has 52 active EULs, which include housing, health care facilities, mixed-use, and other projects.

In addition to its EUL authority, VA may sell unneeded real property and retain the proceeds under its Capital Asset Fund (CAF) authority. However, VA sold no properties using this authority. According to VA officials, the agency places greater emphasis on entering into EULs, compared to real property sales, in part because VA can enter into EULs with fewer restrictions than under its CAF authority. For example, VA may enter into EULs without having to screen the property for homeless use, while property must be screened for homeless use if VA is selling property under its CAF authority. In addition, while VA has the authority to retain and spend proceeds from EULs without the need for further congressional action, proceeds retained under CAF authority are subject to further congressional action.

**VA EUL: Energy Center at North Chicago Medical Center**



Source: GAO.

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on the Department of Veterans Affairs' (VA) use of enhanced-use leases (EUL). As you know, EULs are typically long-term agreements with public and private entities for the use of federal property, resulting in cash, in-kind consideration, or both. My testimony today focuses on (1) VA's authority to enter into EULs, (2) how VA has used its EUL authority, and (3) the relationship between VA's authorities and the amount of real property that is retained or sold. This statement is based on our report issued on February 17, 2009, entitled *Federal Real Property: Authorities and Actions Regarding Enhanced Use Leases and Sale of Unneeded Real Property*.<sup>1</sup> To prepare that report, we analyzed the authorities and actions of the 10 largest federal land-holding agencies, including VA, to enter into EULs and sell unneeded real property. We reviewed VA's legal authorities related to EULs, the sale of real property, and retention of proceeds from EULs and sales; collected data on VA's use of EULs; and visited a property that VA is leasing under an EUL. We conducted our work in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives.

With more than 32,000 acres of land and over 6,200 buildings on approximately 300 sites, VA is among the largest federal property-holding agencies and the operator of one of the largest health care-related real estate portfolios in the nation. However, many of VA's facilities were built more than 50 years ago and are no longer well suited to providing care in the current VA system. As a result, VA has millions of square feet of property that is underutilized or vacant because of age, condition, location, or other factors. Operating and maintaining unneeded property requires VA to spend appropriations that could otherwise be used to provide direct medical care or other services. In a report we issued last year, we estimated that VA spent \$175 million in fiscal year 2007 operating underutilized and vacant space at its medical facilities.<sup>2</sup>

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<sup>1</sup>GAO-09-283R (Washington, D.C.: Feb. 17, 2009).

<sup>2</sup>GAO, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939 (Washington, D.C.: Sept. 10, 2008).

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## VA Has Authority to Enter into EULs and Use the Proceeds with Few Restrictions

VA may enter into EULs and use the proceeds under several authorities. VA may enter into EULs for “underutilized” or “unutilized” real property for up to 75 years in exchange for “fair consideration,” which can be in cash, in-kind consideration, or both.<sup>3</sup> In-kind consideration may include goods and services that benefit VA, such as the provision of office, storage, or other usable space; or construction, repairs, remodeling, maintenance, or other physical improvements to VA facilities. After covering the expenses associated with the EUL, VA may use the remaining proceeds for a variety of purposes, including developing additional EULs; providing medical care; and, at the Secretary’s discretion, construction, alteration, and improvement of any VA medical facility.<sup>4</sup> Moreover, if the Secretary of VA determines during the term of an EUL or within 30 days after the end of the lease term that the department no longer needs the property, the Secretary is authorized to initiate an action to dispose of the property.<sup>5</sup> VA may deposit the proceeds from the disposal of an EUL property into its Capital Asset Fund (CAF) and use those proceeds for property transfer costs and construction, subject to further congressional action.<sup>6</sup> Alternatively, at the Secretary’s discretion, as provided in VA’s annual appropriations acts, VA may deposit the proceeds from the disposal of an EUL property into its major or minor construction accounts and use those proceeds for construction, alteration, and improvement projects for any VA medical facility without further congressional action.<sup>7</sup> VA’s EUL and CAF authorities are listed in appendix I.

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## VA Has Used EULs to Reduce Its Underutilized Property

VA has used its EUL authority to reduce the amount of its underutilized and unutilized property, and to receive financial and nonfinancial benefits. In its fiscal year 2010 budget submission, VA reported that it disposed of 50 buildings and land in fiscal year 2008 using its EUL authority. According to VA, the agency has 52 active EULs, which include housing, health care facilities, mixed-use projects, golf courses, and other projects. For example,

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<sup>3</sup>38 U.S.C. §§ 8161-8169. This authority terminates on December 31, 2011.

<sup>4</sup>38 U.S.C. § 8165 and P.L. No. 110-329, Division E, § 213, 122 Stat. 3574, 3711 (2008).

<sup>5</sup>38 U.S.C. § 8164.

<sup>6</sup>38 U.S.C. § 8165 and 38 U.S.C. § 8118. An appropriations act would need to be passed providing for VA to use these proceeds.

<sup>7</sup>P.L. No. 110-329, Division E, § 213, 122 Stat. 3574, 3711 (2008).

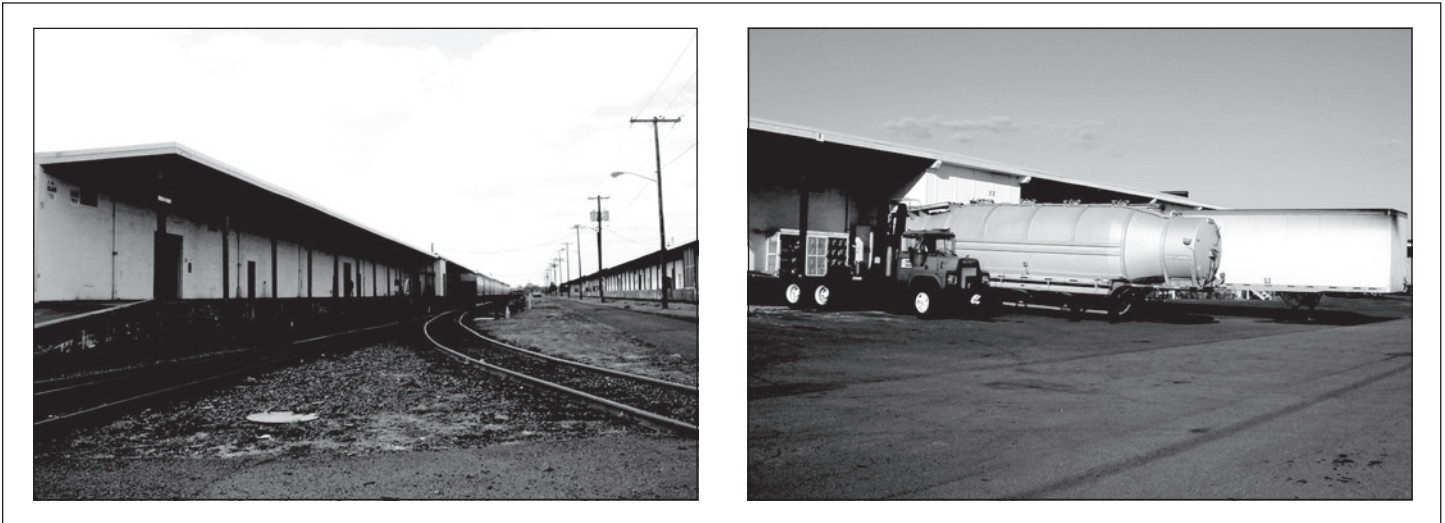
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- In 2005, in Lakeside (Chicago), Illinois, VA reduced its underutilized property at the medical center by nearly 600,000 square feet by using its EUL authority with Northwestern Memorial Hospital. This EUL involved a consolidation of existing services where VA relocated inpatient beds and support services to other campus sites and leased the property to Northwestern, therefore reducing VA's underutilized property at the medical center. VA received \$28 million upon execution of the lease.
  - In 2006, at Fort Howard, Maryland, VA entered into an EUL that will use about 300,000 square feet of vacant space to develop a retirement community, with priority placement for veterans. While VA has retained a portion of space on its medical campus for an outpatient clinic, it has largely reduced the vast majority of its total space at Fort Howard through the EUL. According to VA, the project will save VA over \$1.5 million in construction costs and to avoid approximately \$1 million in costs annually.
  - In another EUL, VA is leasing property in Hillsborough, New Jersey, called Veterans Industrial Park to a company that subleases the property to a variety of commercial interests needing warehouse or light manufacturing space and to the county government. VA officials said that VA did not consider selling this property because, in 1999, when the agency entered into the EUL agreement, it did not have the authority to retain the proceeds from the sale of real property. In addition, the General Services Administration, which sells real property for federal agencies, had a similar property nearby that it had been unable to sell. Other than a small area on the property that is used for VA services to collect and distribute military clothing to homeless veterans, the property lessees are commercial renters who are not providing any direct services to VA. However, VA officials said that VA considers such EULs to be in the agency's interest because VA receives about \$300,000 to \$390,000 a year from rental income that it can use for its priorities.<sup>8</sup> (See fig. 1 for photographs of this property.)

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<sup>8</sup>According to VA officials, VA also has a profit participation agreement for the EUL based on the lessee's net income. In 2007, VA received proceeds from the profit participation for the first time in the amount of about \$32,000.

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**Figure 1: Veterans Industrial Park, an EUL Generating Lease Payments to VA**



Source: GAO.

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## VA's Authorities Affect How the Agency Retains and Disposes of Real Property

In addition to its EUL authority, VA may sell unneeded real property and retain the proceeds under its CAF authority.<sup>9</sup> Under that authority, before VA can dispose of a property, it must determine that the property is no longer needed by the department in carrying out its functions and is not suitable for providing services to the homeless by the department or another entity. If VA sells property under its CAF authority, it may use the proceeds for property disposal costs, minor medical construction projects, or costs associated with the transfer or adaptive use of historic VA properties. Use of these proceeds is subject to further congressional action.

Despite this authority to sell property, VA has not sold any property through its CAF authority. Rather, VA sold one property—the Lakeside Medical Center in Chicago—through its EUL authority.<sup>10</sup> According to VA officials, VA places greater emphasis on entering into EULs, compared to

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<sup>9</sup>38 U.S.C. §8118.

<sup>10</sup>The Lakeside VA Medical Center in Chicago was sold under an EUL agreement after VA determined that it was no longer needed. Sales proceeds were \$50 million, which included a net present value rental return of \$28 million received in 2005 for a 75-year EUL term and an additional \$22 million received in 2006, with the actual closing of the sale of the property.

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real property sales, in part because VA can enter into EULs with fewer restrictions than under its CAF authority. For example,

- VA may enter into EULs without having to screen the property for homeless use, while property must be screened for homeless use if VA is selling the property under its CAF authority. VA officials indicated that disposing of property under the McKinney-Vento Homeless Assistance Act can be time-consuming and cumbersome, taking an average of 2 years. Under this law, all properties that the Department of Housing and Urban Development deems suitable for use by the homeless go through a 60-day holding period, during which the property is ineligible for disposal for any other purpose. Interested representatives of the homeless submit to the Department of Health and Human Services (HHS) a written notice of their intent to apply for a property for homeless use during the 60-day holding period. After applicants have given notice of their intent to apply, they have up to 90 days to submit their application to HHS, and it has the discretion to extend the time frame if necessary. Once HHS has received an application, it has 25 days to review, accept, or decline the application. Furthermore, according to VA officials, VA may not receive compensation from agreements entered into under the McKinney-Vento Act.
- VA has greater flexibility to use proceeds from EULs compared to proceeds from the sale of property through its CAF authority. While VA has the authority to retain and spend proceeds from EULs without the need for further congressional action, proceeds retained under CAF authority are subject to further congressional action. Furthermore, VA may use EUL proceeds for purposes unrelated to real property, such as providing health care services, which are not permitted under VA's CAF authority. VA officials also said that EULs allow VA to realign its asset portfolio in a way that supports its mission by using EULs to obtain facilities, services, in-kind consideration, or revenue for VA requirements that would otherwise be unavailable or unaffordable. The officials added that local and state governments, veterans groups, private partners, and nonprofit entities and other community members potentially benefit when these properties are redeveloped to provide new services and economic opportunities to veterans and the community. VA produces an annual report that discusses and tracks the benefits of its active EULs for the past fiscal year.

Despite VA's preference for using EULs, VA officials said that implementing an EUL agreement can take a long time—anywhere from 9 months to 2 years. According to VA, each EUL is unique and involves a learning process. In addition, VA officials commented that the EUL process can be complicated. The officials noted that land due diligence requirements (such as environmental and historic reviews), public

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hearings, congressional notification, lease drafting, negotiation, and other phases contribute to the length of the overall process. VA has taken actions to reduce the time it takes to implement an EUL agreement, but despite changes to streamline the EUL process, some officials stated that it is still time consuming and cumbersome.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or other members of the Committee may have.

For future contacts regarding this statement, please contact David Wise at (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov). Contact points for our Offices of Congressional Relations and Public Relations can be found on the last page of this statement. Mike Clements, Assistant Director; Bob Homan; Tara Jayant; Susan Michal-Smith; and Alywnne Wilbur also made key contributions to this statement.



# Appendix I: VA Enhanced-Use Leasing and Capital Asset Fund Authorities

Authority	Description
Enhanced-Use Leases 38 U.S.C. §§ 8161-8169	The Secretary of Veterans Affairs (VA) is authorized to enter into leases for up to 75 years with public and private entities for underutilized and unutilized real property that is under the Secretary's jurisdiction or control. EULs shall be for "fair consideration," (i.e., cash and/or in-kind consideration, such as construction, repair, or remodeling of department facilities); providing office space, storage, or other usable space; and providing goods or services to the department. The authority to enter into EULs terminates on December 31, 2011.
Retention of Proceeds/Enhanced Use Leases 38 U.S.C. § 8165	Expenses incurred by the Secretary of VA in connection with EULs will be deducted from the proceeds of the lease and may be used to reimburse the account from which the funds were used to pay such expenses. The proceeds can be used for any expenses incurred in the development of additional EULs. Remaining funds shall be deposited into the VA Medical Care Collections Fund (see authority below for additional uses of EUL proceeds).
Retention of Proceeds/Enhanced Use Lease Property Consolidated Security, Military Construction and Veterans Affairs Appropriations Act of FY 2009, P.L. No. 110-329, Division E, § 213, 122 Stat. 3574, 3711 (2008)	At the Secretary's discretion, proceeds or revenues derived from EUL activities, including disposal, may be deposited into the "Construction, Major Projects" and "Construction Minor Projects" accounts and used for construction, alterations, and improvements of any VA medical facility. <sup>a</sup>
Disposal of Enhanced Use Lease Property 38 U.S.C. § 8164	If the Secretary of VA determines during the term of an EUL or within 30 days after the end of the lease term that the property is no longer needed by the department, the Secretary is authorized to initiate an action to dispose of the property.
Retention of Proceeds/Disposal of Enhanced Use Lease Property 38 U.S.C. § 8165	Funds received by VA from a disposal of an EUL property are deposited into the VA Capital Asset Fund and may be used to the extent provided for in appropriations acts for property transfer costs such as demolition, environmental remediation, maintenance, and repair; costs associated with future transfers of property under this authority; costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating or establishing patient care facilities through construction projects; and costs associated with the transfer or adaptive use of property that is under the Secretary's jurisdiction and listed on the National Register of Historic Places (see authority below for additional uses of EUL disposal proceeds).
Retention of Proceeds/Disposal of Enhanced Use Lease Property Consolidated Security, Military Construction and Veterans Affairs Appropriations Act of FY 2009, P.L. No. 110-329, Division E, § 213, 122 Stat. 3574, 3711 (2008)	At the Secretary's discretion, proceeds or revenues derived from EUL activities, including disposal, may be deposited into the "Construction, Major Projects" and "Construction Minor Projects" accounts and used for construction, alterations, and improvements of any VA medical facility.
VA Transfer Authority—Capital Asset Fund 38 U.S.C. § 8118	The Secretary of VA is authorized to transfer real property under VA's control or custody to another department or agency of the United States, to a state or political subdivision of a state, or to any public or private entity, including an Indian tribe until November 30, 2011. The property must be transferred for fair market value, unless it is transferred to a homeless provider. Property under this authority cannot be disposed of until the Secretary determines that the property is no longer needed by the department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the department under the McKinney-Vento Act or by another entity under VA's EUL authority.

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<sup>4</sup>This provision has been included in numerous appropriations acts. See the Military Construction and Veterans Affairs Appropriations Act of FY 2009, P.L. No. 110-329, Division E, § 213, 122 Stat. 3574, 3711 (2008); the Consolidated Appropriations Act of FY 2008, P.L. No. 110-161, § 213, 121 Stat. 1844, 2270 (2007); the Consolidated Appropriations Act of FY 2005, P. L. No. 108-447, § 117, 118 Stat. 2809, 3293 (2004); and the Consolidated Appropriations Act of FY 2004, P.L. 108-199, § 117, 118 Stat. 3, 371 (2004).

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