

SECTION 5-1: DISPOSAL and DISPOSITION

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5-1-00 POLICY

Real Property or interests therein that are determined to be excess to the needs of HHS are usually disposed of by or through the General Services Administration (GSA). It is the policy of the Administrator, GSA to provide for the transfer of excess real property among Federal agencies to eliminate the need to acquire new real properties. Improvements of no commercial value, after requisite approvals, may be abandoned, donated to public bodies, or destroyed. Under Public Law 93-638, when HHS no longer has a need for real property, it may transfer ownership of the property directly to the tribe for use in the performance of a self-determination contract or to GSA to transfer to the Department of the Interior to take the property in trust for the benefit of the tribe.

A. RETENTION OF REAL PROPERTY

Real property may be retained only when one or more of the following factors exist:

1. There is a firm current or foreseeable authorized requirement for the property;
2. The value and characteristics of the property represent the most effective, economical, and timely method of meeting program requirements;
3. The property is needed to protect the Government's investment in an activity by providing for definite and foreseeable expansion requirements.

HHS organizations shall employ the methodology and criteria depicted in the disposition decision tree as an initial tool for identifying property disposal candidates.

B. AUTHORITIES/REFERENCES.

The Federal Management Regulation, 41 CFR 102-75, provides additional guidance for disposal actions.

C. FEDERAL AGENCIES' HISTORIC PRESERVATION RESPONSIBILITIES WHEN DISPOSING OF REAL PROPERTY UNDER THEIR CONTROL

Federal agencies must, to the extent practicable, establish and implement alternatives, including adaptive reuse, for historic properties that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of Interior's approval of the plans of transferees of surplus federally owned historic properties. Agencies must also review all proposed excess actions to identify any properties listed on or eligible for listing on the National Register of Historic Places. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of a historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

D. TITLE V OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT

Section 203(k) of the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, authorizes the Secretary of the Department of Health and Human Services (HHS) to convey surplus Federal real properties to eligible applicants to convey surplus Federal real properties to eligible applicants to assist the homeless.

In accordance with Title V of the McKinney – Vento Act, organizations that provide services to the homeless receive priority consideration in the use of Federal surplus real property.

Eligible organizations include states and their political subdivisions and instrumentalities, tax supported institutions, and nonprofit organizations. The Federal Property Assistance Program is administered by this Department's Program Support Center. Entities interested in acquiring Federal surplus property for public health uses may obtain an application instruction packet from the PSC.

E. DEFINITIONS

Disposal Agency is defined as the executive agency designated by the Administrator of General Services to dispose of excess or surplus property.

Excess Real Property means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

No Commercial Value means real property, including related personal property, which has no reasonable prospect of being disposed of at a consideration.

Related Personal Property means any personal property which is an integral part of real property or is related to, designed for, or especially adapted to the functional or productive capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property.

Surplus Real Property is defined as any real property and related personal property reported excess which has been screened for the needs of Federal agencies or waived from such screening by GSA and has not been designated by GSA for utilization by another federal agency.

5-1-10 PROCEDURES

The General Services Administration through the Public Buildings Service (PBS) is responsible for promoting effective use of federal real property assets, as well as the disposal of real property that is no longer mission-critical to federal agencies. With thousands of properties in the federal portfolio, disposing of underused federal property is a considerable task. GSA, working together with partner federal agencies, state, and local governments, non-profit organizations, business groups, and citizens, leaves a lasting positive impact on communities by making valuable government real estate available for numerous public purposes.

A. THE DISPOSAL PROCESS. When disposing of federal real estate, the following process is mandated by federal law, except in situations governed by other laws and regulations. The major steps in this process are illustrated below, but, not every property goes through every step of the process. Exhibit X5-1-A is provided for additional information on the disposal process with emphasis on environmental considerations.

1. Excess Property. When a federal agency no longer needs a property to carry out its program responsibilities, it reports this property as “excess” to its needs.

2. Federal Transfer. GSA first offers excess property to other federal agencies that may have a program need for it. If another federal agency identifies a need, the property can be transferred to that agency.
3. Surplus Property. If there is no further need for the property within the federal government, the property is determined “surplus” and may be made available for other uses through public benefit conveyances (PBC), including homeless use, negotiated sales, or public sales based on GSA's determination of the property's highest and best use.
4. Homeless Conveyance. According to the Department of Housing and Urban Development, if a property is suitable for homeless use, it must first be considered as a homeless conveyance before any other public benefit conveyance can be considered.
5. Public Benefit Conveyance. As a PBC, the property can be substantially discounted in price (up to 100% reduction in fair market value) if it is used for a specific public use that qualifies for a PBC through a partner federal agency.
6. Negotiated Sale. GSA can negotiate a sale at appraised fair market value with a state or local government if the property will be used for another public purpose.
7. Public Sale of Property. If state and local governments or other eligible non-profits do not wish to acquire the property, GSA can dispose of surplus property via a competitive sale to the public, generally through a sealed bid or auction.

B. IDENTIFYING AND REPORTING EXCESS REAL PROPERTY

1. OPDIVs, after appropriate internal clearances/approvals are received, shall report excess real property to OFMP/HHS for screening for possible transfer to meet other Departmental needs. Reports shall be submitted at least 120 calendar days in advance of the date such property will become available for transfer or disposal. This notification requirement is applicable even to OPDIVs with delegated authority to excess property without Departmental approval.
2. HHS is designated as the disposal agency for leases, permits, licenses, easements, and similar real estate interests held by the HHS agencies in non-Government owned property. This includes Government-owned improvements located on the premises except when it is determined by either HHS or GSA that the Government's best interests would be served for such disposal to be handled by GSA.

C. TRANSFERS OF EXCESS PROPERTY

Transfers of excess property from one agency to another are generally handled with reimbursement equal to the appraised fair market value of the property (deposited into the Treasury as miscellaneous receipts). Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies.

Approval of the Office of Management and Budget (OMB) is required if a transfer without reimbursement is proposed or when the transferring agency has requested the net proceeds of the transfer. Transfers without reimbursement are generally processed when the Administrator of General Services, with the approval of the Director, has approved a request for an exception from the 100% reimbursement requirement, or Congress has specifically authorized the transfer without reimbursement. See FMR 41 CFR 102-75 for specifics on transfers without reimbursement and requests for net proceeds from a transfer.

HHS agencies requesting transfers of excess properties should prepare a GSA Form 1334, Request for Transfer of Excess Real and Related Property, (see Exhibit X5-1-B) and forward the completed form to OFMP.

D. TRANSFERS FROM IHS

There are statutory provisions that permit transfer of certain excess real property to Indian tribes without screening of other agencies. They include:

1. The Indian Health Transfer Act, Public Law 83-568 of August 5, 1954, transferred Indian Health functions from the Department of Interior, Bureau of Indian Affairs (BIA) to DHHS. Under Section 4 of this Act, the properties of BIA relating primarily to health matters were authorized to be transferred to IHS. In recognition that adjustments would from time to time be called for in the respective real property holdings for the benefit of the Indian tribes, and in order to simplify transfer procedures, a Memorandum of Understanding was entered into in 1961 by the Secretary of the Interior and Secretary of Health, Education, and Welfare, and the Administrator of General Services to cover such transfers as well as retransfers of properties between the two Departments involved. Transfers under that authority, which appears in 41 CFR 102-75.1110, do not require any screening of other agencies.
2. Public Law 93-599, approved January 2, 1975, provides for the transfer, without compensation, of certain excess real properties to the Secretary of the Interior to be held in trust status under BIA in favor of the Indian tribe within whose boundaries such excess property is located or, in Oklahoma, within a former Indian reservation or contiguous to real property now held in trust for an Indian tribe, but only if the property itself was once held in trust by the United States for an Indian tribe. Transfers under this authority do not require any screening of other agencies.
3. The IHS, through §105f of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) [25 U.S.C. §450j (f)] permits the use, acquisition, or donation of real estate to a tribe, tribal organization, or urban Indian program pursuant to a self-determination contract or grant agreement. IHS may also acquire excess real property and transfer ownership of property to a tribe.

5-1-20 GUIDANCE AND INFORMATION

A. DETERMINING ECONOMIC VALUE

1. Government-owned improvements located on land for which HHS has control and accountability may be destroyed after it has been determined that the improvement has no commercial value, or that the estimated cost for continued care, protection, and maintenance would exceed the estimated proceeds of its sale. Improvements with no commercial value owned by the Government may also be abandoned on privately-owned property.
2. No property shall be abandoned or destroyed until the above facts have been determined by a Board of Survey designated by the head of the office or installation having management responsibility for the property. Any official who is directly accountable or responsible for the property shall not serve in any surveying capacity. The survey should determine the original cost of the property (estimated if not known), the estimated cost to the Government for its protection and maintenance, and whether it is dangerous to public health or safety.
3. The criteria of health, safety, and security shall be interpreted literally. Buildings and structures which either have structural defects or are contaminated to the extent that it is impracticable to make them safe or sterile for further use are examples of buildings not meeting these criteria. The

criteria are also applicable to related materials and equipment which have either been contaminated through use in connection with the treatment or research of infectious and contagious disease, or have been subjected to radiation to the extent that it is not practicable to sterilize or neutralize them. The dictates of security policy or regulations require that such property be destroyed when it is no longer of any value or use for the purpose of which it was originally intended.

4. A Request for Transfer of Excess Real and Related Personal Property, in the format shown in Exhibit X5-1-B must be completed in each instance, initiated by the OPDIV, signed by the survey board members, and submitted to the individual delegated with disposal authority for a decision as to whether the property is dangerous to the extent of requiring special safeguards. Based upon the recommendations of the survey board, the individual delegated with disposal authority will then decide whether the property should be retained, destroyed, or abandoned. A copy of the approved Report of Survey will be furnished to the HHS agency.
5. The completed Survey Report must be forwarded to GSA for concurrence when the property either (a) had an original cost of more than \$50,000, (b) is of permanent type construction, or (c) would enhance the value of the underlying land, if retained.
6. When abandonment or donation has been authorized, the OPDIV shall give public notice in accordance with the instructions in FMR 41 CFR 102-75.

B. CUSTODY/ACCOUNTABILITY FOR EXCESS REAL PROPERTY

Once the Report of Excess is reviewed and accepted by the GSA, it will provide an acceptance date and a GSA Control number.

The HHS agency will be responsible for the expense of physical care, handling, protection, maintenance, and repair of excess and surplus real property, pending its transfer or disposal, for not more than 12 months plus the period to the first day of the succeeding quarter of the fiscal year after the date the property is accepted by GSA for disposition. In the event the property is not transferred to a Federal agency or disposed of during that period, the expense of physical care, handling, protection, maintenance, and repair of such property thereafter will be assumed by GSA. Guidelines for protection and maintenance contained in FMR 41 CFR 102-75 should be followed. This responsibility will include the minimum services necessary to preserve the Government's interest, and will continue to be exercised until the actual transfer or disposal of the property.

Excess real property which has been reported to and accepted by the GSA must remain in the HHS agency's Real Property Inventory system until final disposition has been acknowledged by the GSA.

5-1-30 REPORTING REQUIREMENTS

When buildings or other improvements are excessed without the underlying land, an original only of SF 118 and SF 118A, Report of Excess Real Property, prepared in accordance with GSA instructions in FMR 41 CFR 102-75, will be submitted to OFMP. The report will include a request, inserted in Block 18, that GSA acts as the disposal agency for the property and a statement that "This property has been screened against the known needs of the Department."

The report will be reviewed by OFMP and screened against departmental requirements delineated in approved long-range facility plans. If a requirement exists, the Deputy Assistant Secretary for Facilities Management and Policy will authorize transfer between the HHS Agencies. When no departmental need is determined by the OFMP screening procedure, the Report of Excess will be directed to the appropriate GSA regional office in the required number of copies (original plus 4 copies). The holding agency will be notified of this action by copy of the report.

Reports of excess property for lands which are under the custody and responsibility of the Department and which have been withdrawn or reserved from the public domain will follow the same procedures outlined in paragraph B. above, insofar as HHS and the agencies are concerned. OFMP will file with the Department of the Interior the required notice of intention to relinquish the property, and will forward a copy of the notice to the appropriate GSA regional office. The SF 118 will not be completed and processed unless the Secretary of the Interior, with concurrence of the Administrator of General Services, determines that the land is not suitable for return to the public domain. See FPMR 101-47.202-6.

The following excess real property under the custody and responsibility of the Department is not required to be reported to GSA:

- Buildings or structures to be dismantled or removed to make way for new construction on the same site, provided the removal is incorporated in the new construction contract.
- Buildings or other structures for relocation to a new site where the land underlying the dismantled property is not excess.

Where Government-owned land is involved, the OPDIV will submit to OFMP an original of SF118 and schedules A, B, and C, as necessary, including legible copies of documents relating to the Government's title to the land, base on the agency records. Also required is a report which will contain all the information required in FPMR 107-47.202-2, including the legislative jurisdiction, if any, of the United States over the land, together with a citation of the basis of such jurisdiction. The report must also certify that the facilities are in compliance with 40 CFR 761, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." This rule severely restricts the use, handling, storage, and disposal of PCBs.

GSA Real Property Disposal Process as it Relates to the Environment

Step 1: The holding agency declares the property excess.

Step 2: The holding agency completes a National Environmental Policy Act (NEPA) analysis on the effect of its decision to declare the property excess.

Step 3: The holding agency submits a Report of Excess (ROE) to GSA. The ROE must include information about:

- Hazardous substances, as defined by CERCLA
- Underground Storage Tanks
- Asbestos, Lead-Based Paint, Polychlorinated Biphenyls
- Floodplains, Wetlands, Coastal Zone Management
- Endangered Species
- Historic and Cultural Resources

Step 4: GSA will screen the property to determine if the property will be:
Transferred to another federal agency
Declared Surplus

Step 5: If the property is declared surplus, then GSA must make a decision about a proper disposal action. The property can be:

1. Provided for public uses such as -
 - Correctional facility
 - Emergency management response
 - Homeless assistance
 - Historical monument
 - Law enforcement
 - Nonprofit educational institution
 - Nonprofit public health institution
 - Port facility
 - Public airport
 - Public park or recreation area
 - Self-help housing
 - Wildlife conservation
2. Disposed of through a negotiated sale
3. Disposed of through a public sale

Step 6: GSA must complete a NEPA analysis on the effect of its proposed disposal action.

Step 7: GSA must determine if the disposal action affects Floodplains, Wetlands, Endangered Species, Coastal Zone Management, or Historic and Cultural Resources.

Step 8: GSA must include in the Invitation for Bid or in the conveyance document statements about the:

- Presence of hazardous substances as defined by CERCLA
- Presence of Underground Storage Tanks
- Presence of Asbestos, Lead-Based Paint, Polychlorinated Biphenyls
- Existence of Floodplains, Wetlands
- Issues related to Coastal Zone Management, Endangered Species, or Historic and Cultural Resources

REQUEST FOR TRANSFER OF EXCESS REAL AND RELATED PERSONAL PROPERTY	1. GSA CONTROL NO.	PAGE OF PAGES	THIS BLOCK FOR USE BY AGENCY RECEIVING REQUEST		
	2. DATE OF REQUEST		DATE REQUEST RECEIVED		
3. TO (Name, address and ZIP Code of agency being requested to transfer the property)	4. FROM (Name, address and ZIP Code of agency requesting transfer of the property)		HOLDING AGENCY NO. <i>(if any)</i>		
			ACQUISITION COST	\$	
			APPRAISED FAIR MARKET VALUE	\$	
			REIMBURSEMENT	\$	
5. REQUESTING AGENCY'S REPRESENTATIVE TO BE CONTACTED FOR FURTHER INFORMATION (Name, address and ZIP Code)	6. PROPERTY IDENTIFICATION AND ADDRESS (Include ZIP Code)				

REAL PROPERTY REQUESTED					
A. STRUCTURES			B. LAND		C. UTILITIES
USE (a)	NUMBER OF BUILDINGS (b)	FLOOR AREA (Sq. Ft.) (c)	GOVERNMENT'S INTEREST (a)	AREA (Acres or Sq. Ft.) (b)	
(1) OFFICE			(1) FEE		
(2) STORAGE			(2) LEASED		
(3) OTHER (Specify)			(3) OTHER (Specify)		
(4) TOTAL			(4) TOTAL		

8. RELATED PERSONAL PROPERTY REQUESTED	9. ARE FUNDS AVAILABLE FOR REIMBURSEMENT FOR THE TRANSFER OF THIS PROPERTY? <input type="checkbox"/> YES <input type="checkbox"/> NO
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10. CERTIFICATION

Certification is hereby made that this agency has a need for the property identified above to carry on an approved program, that the transfer thereof to this agency for the purposes indicated would be in accord with the intent of the Congress with respect to that program; that the requirement cannot be satisfied by better use of this agency's existing property; and that the proposed land use is consistent with FPMR 101-47.201-1 and 201-2. The statement of justification under block 11 below for the transfer of the property requested is complete and accurate.

SIGNATURE	TITLE	DATE
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11. STATEMENT OF JUSTIFICATION (This statement must include data with respect to all factors covered in FPMR 101-47.4904-1(c) Block 11, Instructions for Preparation of GSA Form 1334).

(If required, use an additional 8 1/2 x 11

