

until the institution which enters into the agreement provides to the Secretary its share of the purchase price of the medical equipment.

(c)(1) Notwithstanding any other provision of law, the Secretary may transfer the interest of the Department in equipment acquired through an agreement under subsection (a) to the institution which holds joint title to the equipment if the Secretary determines that the transfer would be justified by compelling clinical considerations or the economic interest of the Department. Any such transfer may only be made upon agreement by the institution to pay to the Department the amount equal to one-half of the depreciated purchase price of the equipment. Any such payment when received shall be credited to the applicable Department medical appropriation.

(2) Notwithstanding any other provision of law, the Secretary may acquire the interest of an institution in equipment acquired under subsection (a) if the Secretary determines that the acquisition would be justified by compelling clinical considerations or the economic interests of the Department. The Secretary may not pay more than one-half the depreciated purchase price of that equipment.

(Added Pub. L. 102-405, title I, §103(a)(1), Oct. 9, 1992, 106 Stat. 1973.)

§ 8158. Deposit in escrow

(a) To facilitate the procurement of medical equipment pursuant to section 8157 of this title, the Secretary may enter into escrow agreements with institutions described in section 8153(a) of this title. Any such agreement shall provide that—

(1) the institutions shall pay to the Secretary the funds necessary to make a payment under section 8157(b)(4) of this title;

(2) the Secretary, as escrow agent, shall administer those funds in an escrow account; and

(3) the Secretary shall disburse the escrowed funds to pay for such equipment upon its delivery or in accordance with the contract to procure the equipment and shall disburse all accrued interest or other earnings on the escrowed funds to the institution.

(b) As escrow agent for funds placed in escrow pursuant to an agreement under subsection (a), the Secretary may—

(1) invest the escrowed funds in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

(2) retain in the escrow account interest or other earnings on such investments;

(3) disburse the funds pursuant to the escrow agreement; and

(4) return undisbursed funds to the institution.

(c)(1) If the Secretary enters into an escrow agreement under this section, the Secretary may enter into an agreement to procure medical equipment if one-half the purchase price of the equipment is available in an appropriation or fund for the expenditure or obligation.

(2) Funds held in an escrow account under this section shall not be considered to be public funds.

(Added Pub. L. 102-405, title I, §103(a)(1), Oct. 9, 1992, 106 Stat. 1974.)

SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

§ 8161. Definitions

For the purposes of this subchapter:

(1) The term “enhanced-use lease” means a written lease entered into by the Secretary under this subchapter.

(2) The term “congressional veterans’ affairs committees” means the Committees on Veterans’ Affairs of the Senate and the House of Representatives.

(3) The term “supportive housing” means housing that engages tenants in on-site and community-based support services for veterans or their families that are at risk of homelessness or are homeless. Such term may include the following:

(A) Transitional housing.

(B) Single-room occupancy.

(C) Permanent housing.

(D) Congregate living housing.

(E) Independent living housing.

(F) Assisted living housing.

(G) Other modalities of housing.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 417; amended Pub. L. 112-154, title II, §211(a), Aug. 6, 2012, 126 Stat. 1179.)

AMENDMENTS

2012—Par. (3). Pub. L. 112-154 added par. (3).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title II, §211(k), Aug. 6, 2012, 126 Stat. 1182, provided that “Except as otherwise provided in this section [enacting section 8168 of this title, amending this section and sections 8162, 8164 to 8167, and 8169 of this title, and enacting provisions set out as notes under sections 8162 and 8168 of this title], the amendments made by this section shall take effect on the date of the enactment of this Act [Aug. 6, 2012].”

TRAINING AND OUTREACH REGARDING AUTHORITY

Pub. L. 106-117, title II, §208(f), Nov. 30, 1999, 113 Stat. 1568, provided that: “The Secretary [of Veterans Affairs] shall take appropriate actions to provide training and outreach to personnel at Department [of Veterans Affairs] medical centers regarding the enhanced-use lease authority under subchapter V of chapter 81 of title 38, United States Code. The training and outreach shall address methods of approaching potential lessees in the medical or commercial sectors regarding the possibility of entering into leases under that authority and other appropriate matters.”

INDEPENDENT ANALYSIS OF OPPORTUNITIES FOR USE OF AUTHORITY

Pub. L. 106-117, title II, §208(g), Nov. 30, 1999, 113 Stat. 1568, provided that:

“(1) The Secretary [of Veterans Affairs] shall take appropriate actions to secure from an appropriate entity (or entities) independent of the Department [of Veterans Affairs] an analysis (or analyses) of opportunities for the use of the enhanced-use lease authority under subchapter V of chapter 81 of title 38, United States Code.

“(2) An analysis under paragraph (1) shall include—

“(A) a survey of facilities of the Department for purposes of identifying Department property that presents an opportunity for lease under the enhanced-use lease authority;

“(B) an assessment of the feasibility of entering into enhanced-use leases under that authority in the case of any property identified under subparagraph (A) as presenting an opportunity for such lease; and

“(C) an assessment of the resources required at the Department facilities concerned, and at the Department Central Office, in order to facilitate the entering into of enhanced-use leases in the case of property so identified.

“(3) If as a result of a survey under paragraph (2)(A) an entity carrying out an analysis under this subsection determines that a particular Department property presents no opportunities for lease under the enhanced-use lease authority, the analysis shall include the entity's explanation of that determination.

“(4) If as a result of such a survey an entity carrying out an analysis under this subsection determines that certain Department property presents an opportunity for lease under the enhanced-use lease authority, the analysis shall include a single integrated business plan, developed by the entity, that addresses the strategy and resources necessary to implement the plan for all property determined to present an opportunity for such lease.”

ENHANCED USE LEASES

Pub. L. 104-110, title II, §202(c), Feb. 13, 1996, 110 Stat. 771, provided that: “The Secretary shall submit to Congress, not later than March 31, 1997, a report evaluating the operation of the program under subchapter V of chapter 81 of title 38, United States Code.”

§ 8162. Enhanced-use leases

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an “enhanced-use lease”. The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40, or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only for the provision of supportive housing and the¹ lease is not inconsistent with and will not adversely affect the mission of the Department.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b)(1) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall, at the Secretary's discretion, select the

party with whom the lease will be entered into using such selection procedures as the Secretary considers appropriate.

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)(A) For any enhanced-use lease entered into by the Secretary, the lease consideration provided to the Secretary shall consist solely of cash at fair value as determined by the Secretary.

(B) The Secretary shall receive no other type of consideration for an enhanced-use lease besides cash.

(C) The Secretary may enter into an enhanced-use lease without receiving consideration.

(4) The terms of an enhanced-use lease may provide for the Secretary to use minor construction funds for capital contribution payments.

(5) The terms of an enhanced-use lease may not provide for any acquisition, contract, demonstration, exchange, grant, incentive, procurement, sale, other transaction authority, service agreement, use agreement, lease, or lease-back by the Secretary or Federal Government.

(6) The Secretary may not enter into an enhanced-use lease without certification in advance in writing by the Director of the Office of Management and Budget that such lease complies with the requirements of this subchapter.

(c) The entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008 shall be considered to be prohibited by such sections unless specifically authorized by law.

(Added Pub. L. 102-86, title IV, §401(a), Aug. 14, 1991, 105 Stat. 417; amended Pub. L. 106-117, title II, §208(a), (b), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-95, §10(b), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107-217, §3(j)(5), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-178, §4(i)(1), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 110-161, div. I, title II, §224(c), Dec. 26, 2007, 121 Stat. 2272; Pub. L. 112-154, title II, §211(b)(1), (c)(1), (d), Aug. 6, 2012, 126 Stat. 1180, 1181.)

REFERENCES IN TEXT

Section 421(b) of the Veterans' Benefits and Services Act of 1988, referred to in subsecs. (a)(1) and (c), is section 421(b) of Pub. L. 100-322, title IV, May 20, 1988, 102 Stat. 553, which is not classified to the Code.

Section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008, referred to in subsec. (c), is section 224(a) of title II of div. I of Pub. L. 110-161, Dec. 26, 2007, 121 Stat. 2272, which is not classified to the Code.

AMENDMENTS

2012—Subsec. (a)(2). Pub. L. 112-154, §211(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary may enter into an enhanced-use lease only if—

“(A) the Secretary determines that—

“(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

“(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

¹ So in original. Probably should be preceded by “only if”.