

“(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-used 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”.

“(iii) the lease will enhance the use of the property; or

“(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.”

Subsec. (b)(1). Pub. L. 112-154, §211(c)(1)(A), substituted “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.” for subpars. (A) and (B) which read as follows:

“(A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

“(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title, the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A).”

Subsec. (b)(3). Pub. L. 112-154, §211(c)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“(3)(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

“(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.”

Subsec. (b)(4). Pub. L. 112-154, §211(c)(1)(C), substituted “Secretary to use minor” for “Secretary to—

“(A) obtain facilities, space, or services on the leased property; and

“(B) use minor”.

Subsec. (b)(5), (6). Pub. L. 112-154, §211(c)(1)(D), added pars. (5) and (6).

Subsec. (c). Pub. L. 112-154, §211(d), struck out par. (1) designation, substituted “The” for “Subject to paragraph (2), the” and struck out par. (2) which provided conditions under which entering into enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans’ Benefits and Services Act of 1988 (Pub. L. 100-322) would not be considered prohibited under such section.

2007—Subsec. (c)(1). Pub. L. 110-161 inserted “or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008” after “section 421(b)(2) of the Veterans’ Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553)” and substituted “such sections” for “that section”.

2003—Subsec. (a)(3). Pub. L. 108-178 struck out comma after “of title 40”.

2002—Subsec. (a)(1). Pub. L. 107-217, §3(j)(5)(A), substituted “subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40” for “section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)”.

Subsec. (a)(3). Pub. L. 107-217, §3(j)(5)(B), substituted “sections 3141-3144, 3146, and 3147 of title 40” for “the Act of March 3, 1931 (40 U.S.C. 276a et seq.)”.

2001—Subsec. (b)(1). Pub. L. 107-95 designated existing provisions as subpar. (A) and added subpar. (B).

2000—Subsec. (a)(4). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1999—Subsec. (a)(2). Pub. L. 106-117, §208(a), inserted subpar. (A) designation before “the Secretary”, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, and realigned the margins, substituted “; or” for period at end of cl. (iii), and added subpar. (B).

Subsec. (b)(2). Pub. L. 106-117, §208(b)(1), substituted “may not exceed 75 years.” for “may not exceed—”

“(A) 35 years, in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

“(B) 20 years, in the case of a lease not described in subparagraph (A).”

Subsec. (b)(4). Pub. L. 106-117, §208(b)(2), added par. (4) and struck out former par. (4) which read as follows: “Any payment by the Secretary for the use of space or services by the Department on property that has been leased under this subchapter may only be made from funds appropriated to the Department for the activity that uses the space or services. No other such payment may be made by the Secretary to a lessee under an enhanced-use lease unless the authority to make the payment is provided in advance in an appropriation Act.”

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title II, §211(b)(2), Aug. 6, 2012, 126 Stat. 1180, provided that:

“(A) IN GENERAL.—Paragraph (2) of section 8162(a) of title 38, United States Code, as amended by paragraph (1), shall take effect on January 1, 2012, and shall apply with respect to enhanced-use leases entered into on or after such date.

“(B) PREVIOUS LEASES.—Any enhanced-use lease that the Secretary has entered into prior to the date described in subparagraph (A) shall be subject to the provisions of subchapter V of chapter 81 of such title, as in effect on the day before the date of the enactment of this Act [Aug. 6, 2012].”

Pub. L. 112-154, title II, §211(c)(2), Aug. 6, 2012, 126 Stat. 1181, provided that: “Paragraph (3) of section 8162(b), as amended by paragraph (1)(B) of this subsection, shall take effect on January 1, 2012, and shall apply with respect to enhanced-use leases entered into on or after such date.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. I, title II, §224(d), Dec. 26, 2007, 121 Stat. 2272, provided that: “This section [amending this section], including the amendment made by this section, shall apply with respect to fiscal year 2008 and each fiscal year thereafter.”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-95, §10(c), Dec. 21, 2001, 115 Stat. 920, provided that: “The amendments made by subsection (b) [amending this section] shall apply to leases entered into on or after the date of the enactment of this Act [Dec. 21, 2001].”

§ 8163. Hearing and notice requirements regarding proposed leases

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the