

**§ 12.8**

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

**§ 12.8 What transfer or lease instruments does the Secretary use?**

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

**§ 12.9 What warranties does the Secretary give?**

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

**§ 12.10 How is a Public Benefit Allowance (PBA) calculated?**

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal

real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

### Subpart C—Conditions Applicable to Transfers or Leases

#### § 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

- (a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.
- (b) National Historic Preservation Act of 1966, 16 U.S.C. 470.
- (c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*
- (d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).
- (e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).
- (f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*
- (g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*
- (h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*
- (i) Age Discrimination Act of 1975, 42 U.S.C. 1601 *et seq.*
- (j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

#### § 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in ac-

cordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

- (i) Transfer taxes;
- (ii) Surveys;
- (iii) Appraisals;
- (iv) Inventory costs;
- (v) Legal fees;
- (vi) Title search;
- (vii) Certificate or abstract expenses;
- (viii) Decontamination costs;
- (ix) Moving costs;
- (x) Recordation expenses;
- (xi) Other closing costs; and
- (xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.