

**ACQUISITION OF REAL PROPERTY BY LEASE AND BY ASSIGNMENT
FROM GENERAL SERVICES ADMINISTRATION (GSA)**

1. REASON FOR ISSUE: To provide policy and responsibilities for the acquisition of space by direct lease and through assignments from GSA.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This directive sets forth the policies and responsibilities for acquiring space through direct lease and GSA space assignments. The directive contains:

- a. Approval authorities to initiate leasing actions;
- b. Updated policy concerning the Simplified Lease Acquisition Procedures; and
- c. Policy for coordination of space assignments with GSA.

3. RESPONSIBLE OFFICE: The Real Property Management Office (184), Office of Facilities Management, Veterans Health Administration (VHA).

4 RELATED DIRECTIVES: Related directives concerning this subject are as follows:

- a. VHA Directive 10-95-I 00, DOD Base Closure Sites and Their Potential for Use as VA Health Care Facilities, dated October 10, 1995;
- b. VHA Directive 96-049, Veterans Health Administration Policy for Planning and Activating Community Based Outpatient Clinics, dated August 7, 1996; and,
- c. VHA Directive 96-052, Procedures for OMB Circular I-94, Benefit Cost Analysis, dated August 23, 1996.

5. RELATED HANDBOOK: Handbook 7815, Acquisition of Real Property by Lease and by Assignment from General Services Administration (GSA), to be published.

6. RESCISSIONS: This directive rescinds leasing policy statements, delegations of authority, and related responsibilities within the Department of Veterans Affairs (VA) as set forth in the following documents:

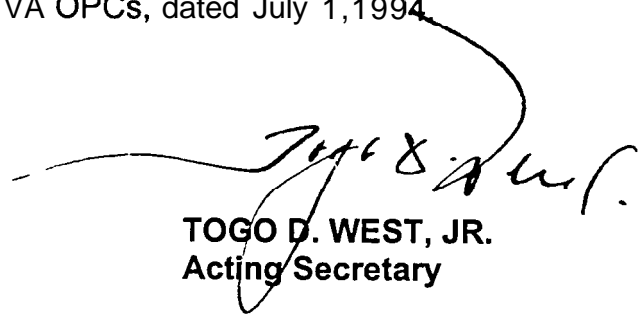
- a. VA Circular 00-90-22, Interim Policies and Procedures in the Acquisition and Administration of Leases, dated August 15, 1990;

b. Associate Chief Medical Director for Operations telegraphic messages dated November 8, 1990, December 22, 1992, and August 2, 1994;

c. Director, Readjustment Counseling Service memo date July 2, 1993; and,

d. MP-3, Part II, Chapter 3, Acquisition of Real Property by Lease and by Assignment from Other Agencies.

e. It also revises pertinent sections of VHA Directive 10-94-057, Expedited Lease Procedure for Acquisition of Space for Primary Care Clinics (PCC) and Other Medically Related Space; Delegation of Lease Approval Authority to Directors, VAMCs/VAM&ROCs/Independent VA OPCs, dated July 1, 1994.



TOGO D. WEST, JR.
Acting Secretary

CERTIFIED BY



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**ACQUISITION OF REAL PROPERTY BY LEASE AND BY ASSIGNMENT
FROM GENERAL SERVICES ADMINISTRATION (GSA)**

1. PURPOSE: This directive implements and establishes policy for the acquisition of space within the Department of Veterans Affairs (VA) by direct lease and General Services Administration (GSA) assignment. It will be used as guidelines until pertinent manual revisions are completed.

2. BACKGROUND: On April 13, 1995, the Under Secretary for Health established the Lease Policy Coordination Council (LPCC). A key responsibility of the LPCC is consolidation of VA leasing policies consistent with the authorities set forth below.

3. POLICY

a. Approval Authorities to Initiate Leasing Actions

(1) Leases Less Than 10,000 Occupiable Square Feet or 100 Parking Spaces and Less Than \$300,000 Annual Rental. Note occupiable square feet is the assignable space used by the agency's personnel and furnishings. It is measured to the inside finish of the dominant portion (e.g., window glass line) of permanent exterior walls. It also includes circulation within the space assignment.

(a) *When Veterans Health Administration (VHA) Headquarters Lease Funding Will Be Requested.* VHA Headquarters funding of new leases terminated September 30, 1996.

(b) *When Funding for VHA Lease Costs is Available Locally and a Determination Has Been Made That the Lease Will Not Be a Capital Lease.* The approval authority is the Director VA medical center or VA medical and regional office centers or Independent VA outpatient clinics for leases having a term of up to 10 years. The local Fiscal Officer will certify that funds are available to support the lease. The Head of the Contracting Activity will determine appropriate acquisition methods. For proposed Readjustment Counseling Service (RCS) leases, the RCS Regional Manager will certify that funds are available to support the lease.

(2) Leases More Than 10,000 Occupiable Square Feet or 100 Parking Spaces but Less Than \$300,000 Annual Rent. The approval authority is the Chief Facilities Management Officer (18) with concurrence of appropriate Administration Head.

(3) Leases in Excess of **\$300,000** Annual Rent (Prospectus Level Lease). The approval authority Secretary of Veterans Affairs (00). The appropriate Veterans Integrated Service Network (VISN) Director, Assistant Secretary for Management (004),

and Deputy Under Secretary for Health (10A) will review and provide a recommendation regarding such leasing actions originating within VHA. For such leasing actions originating within the Veterans Benefits Administration, Assistant Secretary for Management (004) and the appropriate Administrative Head will review the lease and provide an approval recommendation. Lease proposals previously approved by the Secretary (00) **for inclusion** in the Departmental budget require no further VA approval.

b. GSA Assignments of Space

(1) VBA Requests for Space. Requests for space originating from VBA Regional Offices shall be prepared using GSA Standard Form (SF)-81, Request for Space. Each SF-81 must be approved by an Area Director (201A/B/C/D) for confirmation of need and by the Director, Office of Resource Management (24) for authorization of funding and acceptable resource allocation, i.e., space utilization rates. Deviations from VBA's approval process can be approved by the Director of the Office of Resource Management (24). Once approved, the Request for Space package is forwarded to the Real Property Management Office (184) for action.

(2) VHA Headquarters Requests for Space. The Assistant Secretary for Human Resources and Administration (006) through the Deputy Assistant Secretary for Administration (03) is delegated responsibility for acquisition and oversight of all Headquarters space in the National Capital Region. Requests for Headquarters space are submitted to the Office of Administration, Space Management Division (033B), for review regarding operations and compliance with VA Headquarters and GSA utilization standards. The request is forwarded in the form of a GSA SF-81 to the Deputy Assistant Secretary for Administration for approval, then to GSA for execution. With regard to Congressional notification for prospectus level leases prior to execution (see para. 4e below), when Space Management Division determines that space exceeds \$300,000 annual rent, that office will prepare a white paper and forward an action copy to the Deputy Assistant Secretary for Budget (041), whose office will prepare the notification to Congress, with an information copy to the Real Property Management Office (184).

(3) VHA Requests for Space. VA has authority to lease directly any space needed to fulfill its medical mission. Instances may arise in which it becomes advantageous to obtain space through space assignment from GSA. Such requests for space originating from VHA medical centers, medical and regional office centers or independent outpatient clinics shall be prepared using GSA SF-81, Request for Space. The request shall be sent through the VISN Director to the Real Property Management Office (184) to be transmitted to GSA for space assignment. VHA space requirements

shall be based on workloads projected to the currently approved year for official VA workload projections and the application of VA Handbook 7610 (formerly Handbook H-08-09, Criteria for VA Facilities) and VA Program Guide 7610 (formerly Handbook H-08-05, Equipment Guide List).

(4) Charges. Space assignments in Federal buildings will be subject to charges as provided by Public Law 92-313 and as implemented by the Federal Property Management Regulation (FPMR). VA assignments in GSA space may be subject to out-of-pocket expenses as noted in the FPMR Temp D-76.

c. VA Leases

(1) Authorization Process

(a) *Strategic Plan.* Planning for acquisitions through leasing must be included in the Strategic Plan.

(b) *Real Property Management Office (184).* Any space requests requiring Headquarters authorization are processed through the Real Property Management Office (184), which is responsible for obtaining concurrence from the Chief Network Officer (1 ON) and other appropriate officials, to include the Director, Capital Budgeting and Oversight Service (041 G). Refer to Guidelines and Procedures for Construction Impact Items, dated May 28, 1986, if construction impact funds are involved.

(2) Contracting Authorities

(a) *VHA Field Activities.* Upon proper receipt of the facility director's request for leased space, the contracting officer has authority to negotiate, execute and administer leases from 1-10,000 occupiable square feet and 1-100 parking spaces. The total lease term, including all renewal options, shall not exceed 10 years, and the annual rental must be less than \$300,000.

(b) *Real Property Management Office (784).* For all other leases, including leases with terms between 10 and 20 years, the Director, Real Property Management Office (184) or designee will be the contracting officer. Leasing authority for space in excess of 10,000 occupiable square feet and for parking spaces in excess of 100 spaces may be delegated to the contracting officer at a VHA facility by the Director, Real Property Management Office (184), on a case-by-case basis.

(c) *Required Lease Reviews Prior to Award.* For all leases of 10,000 occupiable square feet or less and/or up to 100 parking spaces, when the annual rental is less than \$300,000 and the determination is made that it is not a capital lease (See following subparagraph (3)(a)), VA Headquarters review of the lease by Director, Lease Management Service (184B) prior to execution is waived, unless that Director specifically requires such a review. The Solicitation for Offers, or lease requirements

for those leases acquired using the Simplified Lease Acquisition Procedure, must be reviewed by Regional Counsel prior to issuance. All leases will be reviewed by Regional Counsel. When Lease Management Service (184B) reviews such leases, the legal review will be conducted by General Counsel (025). For all leases negotiated by Real Property Management Office (184), a review of the lease prior to execution will be conducted by General Counsel (025).

(d) *Simplified Lease Acquisition Procedures (SLA P)(formerly Expedited Lease Procedure)*. The Simplified Lease Acquisition Procedures may be used only for award of leasing actions when the average annual rent over the term of the lease, including options, is \$100,000 or less, excluding the cost of operational services, such as heat, light, and janitorial services. The contracting officer must also determine that the extent of special purpose build-out is not too great to allow effective use of SLAP. All leases having an average annual rental without services over \$100,000 must be acquired utilizing standard competitive negotiation procedures.

(e) *Ratification of Unauthorized Leasing Actions*. The medical facility must ensure, to the maximum extent possible, that necessary action is taken to prevent the need for ratification. Although procedures are set forth in pertinent acquisition regulations, these procedures may not be used in a way that encourages unauthorized commitments to be made by Government personnel. The contracting officer shall comply with the Federal Acquisition Regulation (FAR), Subpart 1.602-3 and VA Acquisition Regulation (VAAR), Subpart 801.602-3, for unauthorized commitments made by individuals lacking contracting authority. This also includes unauthorized commitments made by contracting officers who exceed their warranted authority.

(f) *Competition in Contracting Act (CICA) Requirements - Justification for Other Than Full and Open Competition*. Pursuant to CICA, leases must be procured through competitive procedures set forth in the FAR/General Services Acquisition Regulation (GSAR) unless a Justification for Other Than Full and Open Competition is prepared and approved in accordance with FAR Part 6.3 and VAAR Subpart 806.304.

(g) *Appraisal Requirement to Determine Fair Annual Rental*. All leases, except those in which VA is paying a total consideration of \$2,500 or less over the full term of the lease, must be supported by a professionally prepared appraisal indicating Fair Annual Rental of the space and Fair Market Value of the building in which the space is to be leased.

(h) *Davis-Bacon Act Requirements*. All leases should be reviewed to assure their compliance with the Davis-Bacon Act. The Davis-Bacon Act is applicable to all construction, alteration, or repair of public buildings or public works in excess of \$2,000, including such work within buildings in which VA is seeking a leasehold interest.

(i) *Executive Order 72072, Federal Space Management.* Contracting officers shall comply with this Executive Order, especially with Section I-103, in duly considering the centralized business area and adjacent areas of similar character in determining the boundaries for the delineated area of competition.

(j) *Regulatory Requirements.* In developing all VA direct leases, contracting officers will comply with the requirements of FAR, VAAR and GSAR.

(3) Budgeting

(a) *Direct Leasing Budget/Scoring.* Office of Management and Budget (OMB) Circular A-1 1 requires VA to score its leases to determine if a project is an operating or capital lease. If the determination is made that the action is a capital lease, the lease request/package must be submitted to 184 for review and appropriate approval/authorization before proceeding (see App. A).

(b) *Lease Funding.* Effective October 1, 1996 (FY 97), leasing and associated costs for new leases became the responsibility of VAMCs and/or VISNs. However, funding for leases existing as of September 30, 1996, will still be distributed by Real Property Management Office (184) to the respective VISNs at the beginning of the fiscal year.

(c) *Community Based Outpatient Clinics.* All requirements of this directive apply to those projects which are determined to be leases pursuant to VHA Directive 96-049, Veterans Health Administration Policy for Planning and Activating Community Based Outpatient Clinics.

(d) *Benefit Cost Analysis (BCA).* Upon the determination of need for space, a BCA or other structured economic analysis must be performed in determining the method of acquiring space, e.g., lease versus service contracting or constructing space. VHA Directive 96-052, Procedures for OMB Circular A-94, Benefit Cost Analysis, should be consulted in determining appropriate action.

(e) *Department of Defense (DOD) Base Closures.* All requirements of this directive apply to those projects which are leases entered into pursuant to VHA Directive 10-95-100, DOD Base Closure Sites and Their Potential for Use as VA Health Care Facilities. In addition, such leases shall not be used as a means of circumventing or otherwise failing to comply with the OMB requirements for obtaining title to DOD bases subject to the Base Realignment and Closure Act. OMB requirements include paying fair market value for such property unless an OMB waiver of such payment is granted. Appropriated funds may not be expended for other than routine maintenance or minimal work to make the property functional unless VA has an interest in the subject real property greater than a DOD permit, license, or other revocable authority. Leases entered into for real property declared excess pursuant to DOD Base Closure statutes and regulations will be reviewed by the Office of General Counsel (025).

(4) RCS Lease Requirements

(a) *Initiation of Request.* Following preliminary programmatic approval by the RCS Regional Manager and the Director, RCS, leasing requests for Vet Centers are submitted to contracting officers at VA support facilities for acquisition.

(b) *Termination Clause.* No termination clause will be required. The RCS Regional Manager may include such a clause if it is determined to be in the best interest of veteran care. If this clause is included in the lease, it must have been added at the time the solicitation or specifications for SLAP were formulated.

(c) *RCS Regional Manager Review.* Prior to execution, all leases for Vet Centers must be submitted to the RCS Regional Manager for program review and approval and certification of the availability of funding.

(5) Submission of Lease Contracts. For inventory control and quality review, a copy of the complete lease package must be provided to Real Property Management Office (184) within 30 days after lease award. The submission should include the awarded lease, price negotiation memorandum or other summary action showing adequate competition, and the in-lease appraisal. Notice of supplemental lease agreements, lease renewal notices, and lease terminations must also be submitted to Lease Management Service (184B) within 30 days following execution of such actions.

4. RESPONSIBILITIES

a. **Leasing Authority.** The Federal Property and Administrative Services Act, as amended, (Title 40 United States Code (U.S.C.) Section 471 et seq.) gives the Administrator of General Services the authority to procure and manage real property and assign it to Federal agencies. Specifically, the Administrator is authorized to enter into leases for terms not exceeding 20 years (40 U.S.C., Section 490(h)).

b. **Basic VA Authority.** Title 38 U.S.C., Section 8103 gives the Secretary of Veterans Affairs the authority to lease land or interests in land necessary for use as a medical facility, General authority to lease medically related space is contained in FPMR 41 Code of Federal Regulations (CFR), Section 101-18.104-1(h)(2), subject to limitations contained in 41 CFR, 101-1 8.105. Title 38 U.S.C. Section 8109 authorizes the Secretary to obtain parking facilities for employees, visitors, and other individuals having business at VA medical facilities.

c. **Delegation of Authority from General Services Administration (GSA).** Authority to lease space to support VA's medical mission has been delegated to the Secretary by the Administrator of General Services. These authorities provided to the Secretary are redelegated within VA as set forth elsewhere in this directive.

d. Congressional Authorization for Prospectus Level Leases Prior to Funding. Title 38 U.S.C. Section 8104(a)(2) (as amended by section 301(a), Public Law 102-405) requires statutory authorization for all major medical facility leases (i.e., those that have an annual rental in excess of \$300,000), including those for parking facilities, prior to the appropriation and obligation of funds.

e. Congressional Notification for Prospectus Level Leases Prior to Execution. Public Law 102-389, Title V, Section 516, requires that the Secretary submit a written report to the Committees on Appropriations of Congress prior to the use of appropriated funds for any new lease of real property exceeding \$300,000 in annual rent. A "new lease of real property" is one that pertains to real property that VA has never before leased, as well as succeeding or follow-up leases that replace leases that have expired or will soon expire. Lease extensions, renewals, or other leasing actions provided for within pm-negotiated options are not considered new leases within the meaning of Public Law 102-389. Please be advised that the number of the applicable public law changes from fiscal year to fiscal year but remains within Title V, Section 516.

f. Congressional Notification Prior to the Establishment of New Medical Presence. VA is required to notify the Committees on Appropriations prior to the establishment of any new medical presence, regardless of cost. Approval must be received before execution of a lease.

Note: All questions concerning VA leasing of real property should be directed to Lease Management Service (1848)

DETERMINATION OF CAPITAL OR OPERATING LEASE

When analyzing a possible lease acquisition, if the response to any of the following questions is "yes," the action must be considered a capital lease and Real Property Management Office (184) must be contacted before proceeding with the action:

1. Does ownership of the asset transfer to the Department of Veterans Affairs during the term of the lease or shortly after the end of the lease period?
2. Does the lease contain a bargain-price purchase option?
3. Does VA accept all risks of ownership responsibility for destruction or loss of the property?
4. Does the lease term exceed 75 percent of the estimated economic life of the asset?
5. Does the present value of the minimum lease payments over the life of the lease exceed 90 percent of the fair market value of the building at the inception of the lease?
6. Is the building not a general purpose building but designed and built to unique specification of VA as Lessee?
7. Is there no private sector market for the building?
8. Is the building to be constructed on Government land?