

ENHANCED-USE LEASING PROGRAM POLICIES AND PROCEDURES

1. REASON FOR ISSUE: This handbook establishes Departmental policy and procedures for enhanced-use (EU) leasing.

2. SUMMARY OF CONTENTS:

a. The EU leasing process consists of four phases: formulation, execution, steady state, and disposal (if applicable). The formulation phase includes procedures for concept paper review and reporting requirements; public hearings; direct source leasing; solicitations; bid terms and agreement; environmental and historic planning, compliance and reporting requirements; developer selection and notification; appraisal and reporting requirements; protests; business case application review and standards; notice of intent to enter into an EU lease; and lease development and reporting requirements. The execution phase includes lease signing and recording. The steady state phase consists of lease administration; deposits of monetary proceeds; use of funds; and EU reimbursement procedures. The disposal phase consists of the Secretary's initiation and undertaking of transfer proceedings until VA no longer owns the underlying property.

b. **VA Handbook 7415 References:** The references are included in a separate document accessible through the OAEM Web site at <https://vaww.va.gov/oaem/>.

3. RESPONSIBLE OFFICE: The Office of the Assistant Secretary for Management (004) is responsible for the contents of this handbook.

4. RELATED DIRECTIVE: VA Directive 7415, Enhanced-Use Leasing Program Policies and Procedures.

5. RESCISSIONS: VA Handbook 7415.1, Financial and Program Procedures Regarding Enhanced-Use Leases, dated February 5, 2003.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

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ENHANCED-USE LEASING PROGRAM POLICIES AND PROCEDURES

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ENHANCED-USE LEASING PROGRAM POLICIES AND PROCEDURES**Chapter 1 - Introduction****1. PURPOSE**

The enhanced-use (EU) leasing program is a part of the Department's capital asset management program. The program is an innovative method of acquiring facilities, goods and services in support of achieving departmental goals and objectives. In return for allowing VA capital assets to be developed by an EU lessee, per Title 38 U.S.C. section §8162(b)(3), VA must receive fair consideration consisting of monetary payments, free or discounted use of capital assets or services for VA programs, and/or other "in-kind" goods and services which, in the opinion of the Secretary, constitute fair consideration.

2. BACKGROUND

a. The EU authority was enacted in 1991, under sections 8161 through 8169 of Title 38, U.S. Code (38 U.S.C. §§ 8161 – 8169) and is available in VA Handbook 7415, Reference A and on the OAEM Web site: <https://vaww.va.gov/oaem/>. Under this authority, VA may lease land or buildings under the jurisdiction or control of the Secretary to a public or private sector entity for a term not to exceed 75 years. The leased property may be developed for VA and/or non-VA uses that will enhance the property, provided such uses are consistent with and do not adversely affect the mission of VA. The proposed leased property must include space for an activity that contributes to VA's mission, or follow a concept that provides for using consideration from the lease to improve health care services to eligible veterans. Benefits to VA from an EU lease may include cost savings, cost avoidance, revenue, services, space, and buildings. Other benefits may include benefits to the local community, such as an increase in local employment and tax revenues for the local, state and federal sectors.

b. Under the EU leasing authority, VA is not required to follow the Federal Acquisition Regulation (FAR) or the Veterans Affairs Acquisition Regulation (VAAR) when selecting the EU lease lessee, but use of the FAR/VAAR as guidelines will help ensure the integrity of the selection process. Although Congress chose to exempt the EU leasing authority from an array of federal statutes, VA must abide by all federal environmental laws (e.g., the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA) and the National Historic Preservation Act (NHPA)).

CHAPTER 2 - ENHANCED-USE LEASING PROCESS AND PROCEDURES

1. Development. The development of EU lease projects requires compliance with established policies and procedures during each phase of project development, as described in Chapter 5 of this handbook. Additional information is provided through Web links to VA Directive 7415, Enhanced-Use Leasing Program Policies and Procedures, which is located on the OAEM Web site: <https://vaww.va.gov/oaem/>. A "Quick Reference Guide" to the EU program is located in Reference B.

2. Capital Asset Management. VA utilizes a comprehensive, centralized approach in the management of its capital assets. This approach enables VA to closely align asset decisions with its mission and strategic goals, elevate awareness of its assets, and use performance management techniques to monitor asset performance through the entire lifecycle of an asset. Accordingly, all EU leasing projects will be developed, managed and tracked throughout their lifecycle in the Capital Asset Management System (CAMS) under the Agreements database. CAMS captures the lifecycle of EU leasing projects in four phases:

- a. Formulation
- b. Execution
- c. Steady State
- d. Disposal (if applicable)

(1) **EU Leasing Phases.** To enter the formulation phase, EU projects must be identified as valid Departmental priorities and included on the Secretary's priority list, as described in Chapter 4. EU projects are considered to be in the formulation phase until the lease award date; in the execution phase from the time of lease signing until their acceptance, commencement, or activation date; in steady state from acceptance and commencement or activation of any development or improvements required by the EU lease until their termination date; and in disposal from the Secretary's initiation of transfer proceedings until VA no longer owns the EU lease property. CAMS can be accessed at the following Web address: <https://vaww.cams-agreements.aac.va>. An overview of the EU leasing process requirements and timetables is located in Reference C.

(2) **Delegation of Authority.** Notes for Re-Delegated Projects: The Secretary has delegated the authority to enter into EU leases to the Assistant Secretary for Management (AS/M). The AS/M may re-delegate this authority on a project-by-project basis to the Under Secretary of each Administration. The Under Secretary for Health may further re-delegate this authority at his/her discretion to the Capital Asset Management and Planning Service in the Office of the Deputy Under Secretary for Health for Operations and Management (10N) or to the VISN Capital Asset Managers. The Under Secretaries for Benefits and Memorial Affairs may not re-delegate this authority without specific approval from the Assistant Secretary for Management. Re-delegation can only be granted for EU projects that meet the following criteria:

(a) **Government Liability** - The Department assumes no obligation or liability other than the outlease of land for any aspect of financing, nor guarantees any occupancy or utilization of any facility pursuant to the lease.

(b) **Value** - The project's capital cost, including both the lessee's and VA's contribution other than land, must be below the threshold for major construction (currently \$10 million).

(c) **Term** - The project's lease term cannot exceed 55 years.

(d) **Significance** – The project cannot consist of what are considered "significant asset initiatives," such as campus realignments, or are not of exceptional visibility as determined by the Secretary.

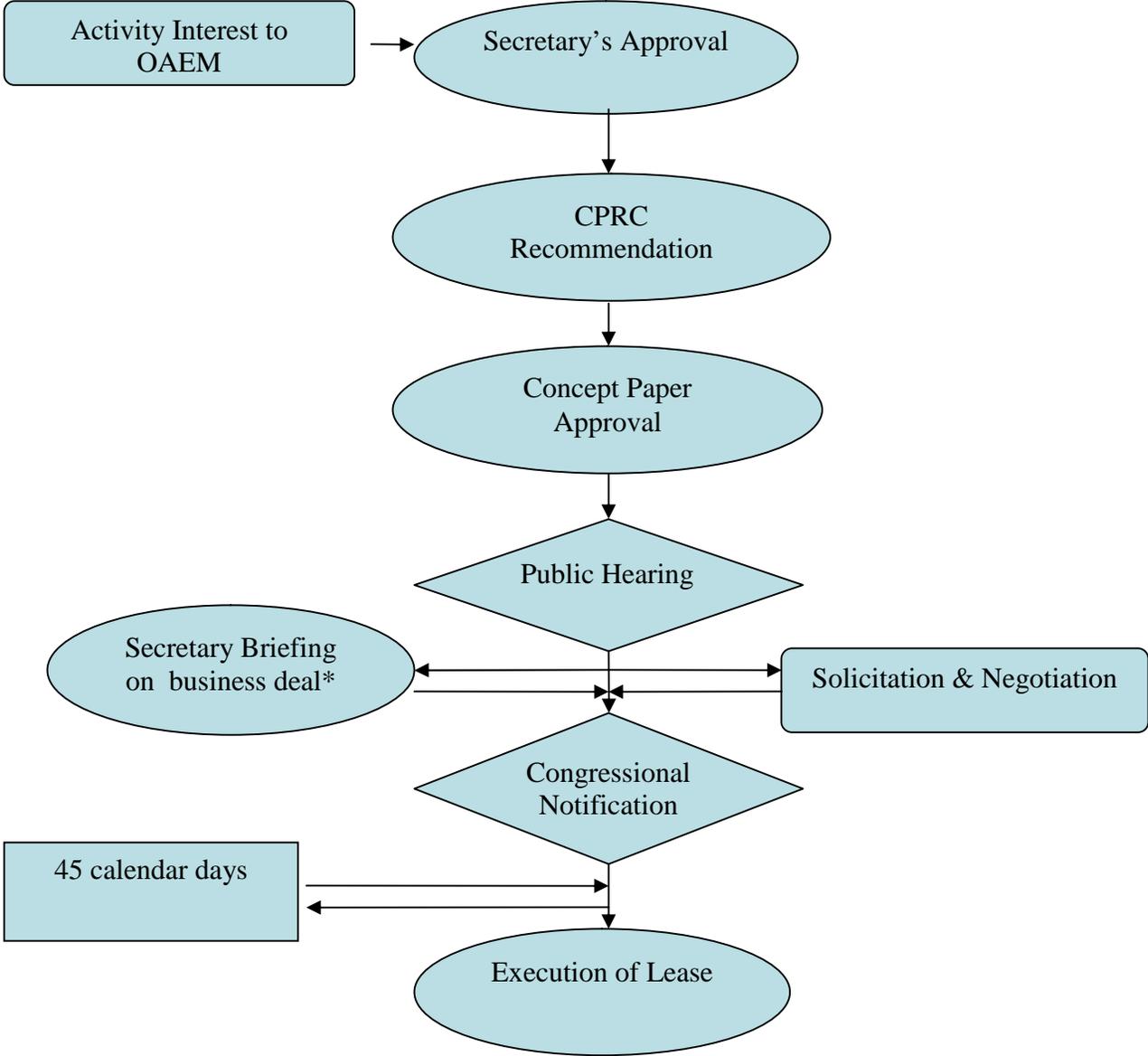
(3) **Re-delegation** may be granted by the Assistant Secretary for Management on a case-by-case basis.

(4) **Re-Delegated Projects** will not receive disposal authority under Title 38 U.S.C. § 8164 (the Secretary has not delegated such authority). Further discussion of criteria for re-delegation is located in Reference D. Throughout this handbook, discussion of any processes or issues that are specific to re-delegated projects will be addressed in "Additional Notes for Re-Delegated Projects."

CHAPTER 3 – REPORTING REQUIREMENTS

Milestones, approvals and supporting documents that occur during the formulation, execution, steady-state, and disposal phases of EU leasing projects must be reported and attached in Capital Asset Management System (CAMS) and the Capital Asset Inventory (CAI) database. The Administration or staff office responsible for the project (as defined in this handbook) will ensure that all reportables are appropriately and accurately recorded. Milestones and approvals requiring reporting will be entered within 10 business days of completion. Typical operations during the steady state phase will be addressed through monthly updates, including entering the consideration VA receives for a lease into the CAI database. Information from the CAI database is pulled into CAMS and is available at the following Web address in CAMS:
<https://vaww.vhacowebapps.cio.med.va.gov/cis>

Enhanced-Use Leasing Process Flow Chart



Note: *Projects over \$10 million NPV. Briefing is prior to creation of legal transaction documents.

CHAPTER 4 – SECRETARY’S PRIORITY LIST

The “Secretary’s Priority List” is the list of EU leasing projects that have been recognized by the Secretary as meeting Departmental objectives for the EU program and, accordingly, are appropriate for expenditure of VA resources toward development. The process for placing projects on this list begins with a request from the initiating organization. Each administration or staff office should develop and conduct an internal prioritization process for identifying projects for inclusion on this list. The Under Secretary or Assistant Secretary of the requesting organization will submit requests to the Assistant Secretary for Management (AS/M) on a quarterly basis, beginning with the first week of each fiscal quarter. Each request should state the name, location, and type of project, a clear and brief description of the project, and a clear and brief statement of anticipated benefits and/or risks. The AS/M (or other appropriate designated official) will make recommendations to the Secretary based upon the availability of resources to successfully bring the project(s) to closing. Following the Secretary's approval, the AS/M will notify the requesting organization of the project's status, and OAEM will maintain a listing of approved projects. To review the status of approved projects, refer to the OAEM Web site at: <https://vaww.va.gov/oaem/>.

CHAPTER 5 – FORMULATION PHASE

1. Concept Paper should be entered into CAMS as a “candidate” project.

2. Responsible Offices

a. VHA Projects. The VHA point of contact for EU lease projects is the Director, Capital Asset Management and Planning Service (CAMPS). CAMPS will secure all required concurrences from its own organization, including concurrence from the Concept Paper Review Committee (CPRC) as noted in Chapter 5, paragraph 6. At a minimum, concurrence/approval from the Deputy Under Secretary for Health for Operations and Management (10N) must be included.

(1) Additional Notes for Re-Delegated Projects. Prior to submitting the concept paper application in CAMS, VHA must determine whether to request project delegation and to whom. If VHA wants to delegate, a written request for delegation including justification must be signed by the Under Secretary for Health and submitted as an attachment to the concept paper application in CAMS.

b. VBA Projects. The VBA point of contact for EU lease projects is the Director, Office of Facilities, Access and Administration (OFAA) (20M3). OFAA will secure all required concurrences within its own organization, including concurrence from the Concept Paper Review Committee (CPRC) as noted in Chapter 5, paragraph 6. At a minimum, concurrence/approval from the Deputy Under Secretary for Benefits must be included.

c. NCA Projects. The NCA point of contact for EU lease projects is the Office of Construction Management (OCM) (41F). OCM will secure all required concurrences needed within its own organization, including concurrence from the Concept Paper Review Committee (CPRC) as noted in Chapter 5, paragraph 6. At a minimum, concurrence/approval from the Deputy Under Secretary for Memorial Affairs must be included.

d. Joint Administration Projects. EU lease concept papers are submitted to OAEM via CAMS after appropriate concurrences are received from each administration involved in the project as outlined above.

e. Staff Office Projects. EU lease concept papers are submitted to OAEM via CAMS after the requesting Assistant Secretary receives appropriate concurrences from the administration(s) and staff office(s) involved in the project and approval of the Office of Congressional and Legislative Affairs (009) and Office of Security and Law Enforcement (07).

3. Preparatory Planning. Prior to the decision to develop a concept paper, the responsible office should establish a database of preliminary background information that

will be useful in assessing the potential project's viability, impacts, costs, and benefits. An appropriate starting point for data collection is the Reuse Data Sheet for the location. A template is located in Reference E. Additional preparatory steps typically include:

a. Preliminary Inspection. This inspection usually involves the location and physical description of the unused or under-utilized VA land and facilities, such as acreage, buildings, and layout of the site; impacts of the adjacent development(s); observation of the site and facility conditions; and physical limitations such as local, state or federal limitations on the site (e.g., zoning, environmental and historical).

b. Establishment of Property Baseline. A baseline would include documents pertaining to the site under consideration such as title files, legal descriptions, site plans, surveys, drawings and aerial photographs, utilities, flood plain maps, local zoning and code requirements, and local comprehensive plans (development plans).

c. Establishment of Environmental and Historical Baseline. A baseline includes existing environmental documents such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA) and National Environmental Policy Act (NEPA) surveys, abatements and/or remediation projects to date; environmental and operating permits; endangered species or habitat data (wetlands); historical designation; and any existing agreements between VA and the State Historical Preservation Office(s).

d. Preliminary Asset Valuation. Valuation includes recent appraisals (e.g., 6 months to 1 year depending upon market conditions in the vicinity of the designated site of the EU lease), if available and the estimated land and building value (which can be obtained from the local tax assessment office and by looking at “comparable” properties in the adjacent community). A state-certified commercial appraiser can provide a written advisory opinion regarding the valuation of the proposed property given its proposed use(s) and any other potential “highest and best uses.”

e. Reuse Plans. Reference and update, as necessary, previously-completed reuse plans and information.

f. Market Analysis. This includes an analysis of the local market, including other property available, development potential of the market, possible alternatives to the proposed project, and current and anticipated supply and demand conditions affecting the project.

4. Use of OAEM Support Contract.

a. Indefinite Delivery Indefinite Quantity. An indefinite delivery indefinite quantity (IDIQ) contract has been awarded to support EU leases. This contract or successor contracts may be used to support the preparatory planning described in paragraph 3 of this section. Available services include research, analysis, evaluation of VA real estate and outside real estate markets, interpretation, consultation and advice, and preparation of necessary documentation. Offices interested in using this IDIQ contract should contact

the Cleveland Business Office for guidance.

b. Expert Use. Following submission and approval of an enhanced-use lease concept paper, offices may also elect to utilize expert services such as asset management, real estate advisory, feasibility, environmental, valuation, legal support, and transaction management to support the continuing formulation effort described below from the IDIQ contracts.

c. Services Procedure. All required services will be initiated via task order request encapsulating the objectives outlined in the support contract. No statement of work may be edited or changed in any way without written permission of the project contracting officer or the contracting officer's technical representative.

d. Additional Information. Additional information, including sample Scopes of Work for tasks under the support contract, is included in Reference F.

e. Use of Legal Support. The Office of General Counsel (OGC) will assist in the preparation of documentation supporting EU projects, and will be responsible for drafting of EU leases and exhibits (including facilities use and service agreements), easements, and other encumbrances affecting the leasehold, financial closing documents, and property disposal documents.

Additional Notes for Re-Delegated Projects. Regional Counsels, as assigned by OGC, will provide legal support for re-delegated projects. Drafting of project documentation, including leases, may be performed by Regional Counsels or contracted attorneys, as determined appropriate and subject to review by OGC.

5. Concept Paper

a. Application. When the preparatory steps have been completed, the responsible office will develop a concept paper application in CAMS. For a sample concept paper and a comprehensive list of the roles and responsibilities required for a concept paper application, see Reference G.

(1) **Web-Based Applications.** Web-based concept paper application forms are located on the CAMS Agreements database at <https://vaww.cams-agreements.aac.va.gov/ProSight/>. A unique password and security permission must be obtained in order to access and use the database. The CAMS access request form is available at <https://vaww.va.gov/oaem>. If the server is not available after hours, contact the Austin Automation Center (AAC) help desk at 512-326-6780.

(2) **Business Process.** After access to CAMS is obtained, refer to the Business Process Procedures (BPPs), which are instructions to carry out specific tasks within CAMS. These instructions include the steps needed to create, modify and save concept papers, as well as how to access concept paper guidance documentation and help procedures in CAMS. Refer to the OAEM Web site at <https://vaww.va.gov/oaem/> for access to a comprehensive list of all BPPs.

(3) **Concept Paper Completion.** Upon completion of the concept paper in CAMS with the necessary approvals, the Capital Asset Management and Planning Service will notify the Director, Investment and Enterprise Development Service (004B2) by email, that the concept paper, concurrences and all applicable attachments have been placed in CAMS.

b. Concept Paper Review Committee. In order to recognize differing requirements within each administration and assure prioritization of limited resources available for the development and execution of EU projects, all projects entered into CAMS will be reviewed by the Concept Paper Review Committee (CPRC) prior to any further expenditure of effort. The CPRC will review and recommend concept papers to the Assistant Secretary for Management for final approval. The CPRC membership will include: OAEM, Veterans Canteen Service, Office of Security and Law Enforcement, Office of Congressional and Legislative Affairs, and Office of General Counsel. Additional members from individual administrations will include VHA projects (CAMPS and VHA CFO), VBA projects (OFAA and VBA CFO), NCA projects (OCM and NCA CFO), Historic Preservation Representative and any other program officials as needed. At a minimum, the CPRC shall review the concept paper CAMS application including, but not limited to, the following:

- (1) Existing environmental survey
- (2) Other current VAMC data validation survey
- (3) Real property baseline
- (4) Available market data
- (5) Estimated consideration and type
- (6) Estimated appropriate lease term
- (7) Commitment potential
- (8) Need for capital contributions
- (9) Composition of project team
- (10) Justification for direct source award (as applicable)
- (11) Significant legal hurdles (e.g., statutory limitations)
- (12) Assessment of site vulnerabilities (security and emergency services response)

Additional Notes for Re-Delegated Projects: The CPRC will also be responsible for reviewing all requests for delegation of authority.

c. Approval and Notification. Based on the written recommendations of the CPRC, the Assistant Secretary for Management will reject or approve the concept paper via formal memo, or may direct further investigation or analysis of the project in order to support reconsideration. A sample Concept Paper Approval Memo is shown in Reference H.

Additional Notes for Re-Delegated Projects: If approved, the Assistant Secretary for Management will state in the approval memo, if project is re-delegated and will specify the official who shall be delegated authority to execute the lease.

6. Officials with Project Execution Responsibilities. The Assistant Secretary for Management will appoint a Designated VA Representative (DVR). The DVR works within OAEM and provides the necessary everyday administration, monitoring and management of EU leases (including any service/use agreements) before or after lease execution by the Assistant Secretary for Management for all non-delegated EU leases. In addition, the DVR will be delegated authority to approve payments, disbursements, and reimbursements, and to issue written correspondence needed to properly administer an EU lease.

Additional Notes for Re-Delegated Projects: Each official having re-delegated authority to execute a lease is also designated as the Delegated Local VA Representative (DLVR), with authority to perform the same functions regarding such lease as the DVR is authorized to perform for non-delegated EU leases. Any disputes regarding the lease shall be forwarded to the DVR for resolution.

(1) **Project Leader.** The DVR or DLVR, as applicable, shall assign to an EU project leader (PL) the responsibility for managing the day-to-day progress of an EU lease from concept paper approval through until 3 months after final completion of the EU lease improvements, unless sooner revoked in writing. For OAEM controlled projects, the PL will be the assigned Portfolio Manager. The PL will provide support to the DVR/DLVR as needed, and must notify the DVR or DLVR immediately of any problem areas noted in the performance of the EU lease. The PL shall not have any authority to change, modify, amend, or terminate any terms or conditions of the lease or other contractual document, nor may the PL reassign any responsibility granted herein.

(2) **Project Leader Authority.** The authority granted to the DVR, DLVR, and PL is to be exercised only by the named official. A summary of the responsibilities of the DVR, DLVR, and project leader is provided in Reference I.

7. Reporting Requirements.

(1) Once the project has been added to the Secretary's priority list, accounting classification codes and revenue source codes must be assigned for each project. These codes allow costs and revenue to be tracked in CAMS and in the Financial Management System (FMS). The PL must request assignment of these codes from OAEM's Capital Asset Management Service (004B3). This request may be made by email.

(2) The PL is required to ensure that the concept paper approval dates and all supporting documentation are reported in CAMS within 10 business days of approval.

8. Public Hearing.

(1) **Hearing Notice.** After receiving formal approval of the concept paper from OAEM, the PL must submit a draft public hearing notice to the Director, Investment and Enterprise Development Services (IEDS). This draft must provide the proposed date, time, place and purpose of the hearing and identify both the property and use(s) proposed under the lease. It should describe how the proposed use(s) would contribute cost

effectively to VA's mission, and not adversely affect or be inconsistent with it. In addition, the notice should describe how the proposed use(s) would affect veteran services or would result in a demonstrable improvement of services to eligible veterans in the geographic area of the property's locale. IEDS will coordinate a legal sufficiency review and clearance of the draft notice from Office of General Counsel (02). In concert with the Office of Congressional and Legislative Affairs (009), the Deputy Director of OAEM will provide a notification via e-mail of the proposed hearing to VA's Congressional Oversight Committees. This notice should be sent 2-4 weeks prior to the public hearing.

(2) **Approved Notice.** Following this informal notification, IEDS will advise the PL to issue the approved notice of the hearing to the public via publication in the local media (e.g., two local newspapers) at least 14 days prior to the public hearing.

(3) **Guidance.** Reference J contains guidance on conducting public hearings and samples of the congressional notification letters.

(4) **Date.** The PL will ensure that the public hearing date is reported in CAMS within 10 days of completing the hearing. Following the public hearing, the administration or staff office responsible for the project will determine whether VA should proceed with the project. If the public hearing is controversial and results in changes to the proposed project, the PL will be required to identify and address the concerns and submit written documentation of the project's changes to the initiating administration in VA Central Office as well as OAEM for further action. This documentation will also be placed into CAMS.

(5) **Support.** At OAEM's discretion, it may have one or more of its staff members attend and provide support at public hearings.

9. Direct Source Leasing.

a. **Competition.** As a general rule, the PL shall promote competition for all EU leases by issuing a "Request for Proposals" (RFP). The RFP documents are intended to generate offers from potential developers seeking to finance, develop and operate the target property for an identified purpose under an EU lease. Ideally, any such purpose will be for the "highest and best use" for that particular site, so as to generate the maximum amount of consideration and benefit to VA in exchange for entering into the EU lease.

b. **Direct Source Criteria.** Under limited circumstances, the DVR/DLVR may directly select an EU lessee without first issuing an RFP and conducting a competitive evaluation. These circumstances have been divided into three "tiers" or sets of requirements that must be met before pursuing a direct-source lease. EU lease projects must meet the following criteria of any one tier to be eligible for a direct-source award:

(1) **1st Tier:** VA can direct-source lease to a developer/lessee that will provide homeless services to veterans.

(2) **2nd Tier:**

(a) The targeted developer/lessee must be a VA affiliate or a state/local government entity; and

(b) The property proposed use(s) would represent the highest and best use consistent with VA's mission and operations; and

(c) Only one developer/lessee is capable of developing the property into and operating the property as the contemplated property use; or

(d) The contemplated property use is one that both VA and the targeted developer/lessee presently need to support their mission activities; and

(e) A "Request for Expressions of Interest" (REI) is issued (i.e., issued or approved by OAEM) and no interested offerors besides the targeted developer/lessee timely respond to the REI. (Note: The REI scope shall be the same scope as proposed by the targeted developer/lessee to ascertain if there are other parties interested in developing the property into the same highest and best use consistent with VA's mission and operations).

(3) 3rd Tier:

(a) A national security event or circumstance necessitates that VA proceed with direct source leasing an underlying EU project to one identified developer/lessee; or

(b) An international agreement between the U.S. and another governmental entity exists pursuant to which only one responsible developer/lessee exists for the proposed EU project; or

(c) A direct source lease to one specific developer/lessee is explicitly required or authorized by Federal statute.

c. Direct Source Leasing Memorandum. For all instances in which a non-competitive selection is being considered, a written "Direct Source Leasing Memorandum" must be prepared that addresses the requirements of subparagraphs 9.b.2.(a) and (b) in this chapter as applicable and submitted for concurrence by Office of General Counsel (02) and approval by the Assistant Secretary for Management prior to the public hearing. Refer to Reference K for a sample memorandum.

d. Commitment of Funds. VA funds should not be committed to projects proposed for direct-source awards beyond the preparation of the concept paper until eligibility for such an award under the above-noted criteria has been confirmed. Also, for all direct source leases that are proposed pursuant to the "2nd Tier" criteria discussed in chapter 9.b.2. above, an REI will be required to determine the existence of other potentially suitable candidates for the lease. Should the known sole party be the only respondent to the REI, appropriate due diligence will be deemed to have been performed and the DVR/DLVR may proceed. However, if the REI results in the identification of additional potential lessees, a full and open competition will be required.

e. **Use of FAR and VAAR.** It is important to note that neither VA's EU lease authority nor solicitations issued are bound by the FAR or VAAR. These regulations, however, are normally used as guidelines for the content, format and evaluation of EU lease solicitations. For purposes of evaluating a direct-source leasing request, the above guidance will be used for initial review and determination.

10. Solicitation Procedures, Forms, Agreements and Reporting Requirements.

Sample documents including a Request for Proposals (RFP), public advertisement, source selection plan, and lease are available in Reference L and on the OAEM Web site at <https://vaww.va.gov/oaem/>.

Reporting Requirements. The PL is required to report the solicitation and supporting documentation in CAMS within 10 business days of the selection of the preferred developer/lessee. If VA anticipates receiving in-kind consideration, a requirement should be added to the solicitation requiring the developer to set up a reporting system to document its provision/performance of the in-kind consideration to VA. The developer will provide these reports to VA, and VA will validate the information.

11. Bid Terms Agreement. Upon the selection of the preferred developer/lessee, VA may enter into a "Bid Term Agreement" (BTA) with the developer/lessee. The BTA is a binding agreement that outlines the obligations of the developer/lessee and VA from the developer/lessee selection date until the execution of the lease and the closing date of the transaction. A BTA is provided in Reference M.

12. Developer Selection and Notification. The DVR/DLVR is responsible for selecting a preferred developer/lessee in accordance with the policies and mandates of the EU leasing authority. The PL, with guidance from the DVR/DLVR, will be the point of contact for negotiations and finalization of all business terms. With support from the Office of General Counsel, assigned regional counsels and contracted legal support as needed, the PL will finalize all legal terms of the proposed lease and associated commercial and applicable financial documents. After completing all environmental, historical and/or other requirements, the selected developer will be notified by the DVR/DLVR of the course of action both parties will undertake to enter into an EU lease.

13. Protests. VA may receive a complaint or protest from a third party challenging VA's selection of a preferred developer/enhanced-use lessee. In all instances where the DVR/DLVR responsible for the project becomes aware of a protest or the reasonable likelihood of a protest or claim, the DVR/DLVR should promptly contact the Director, Investment Enterprise Development Service, so OAEM can assess the situation.

14. Ongoing Environmental and Historical Preservation Planning, Compliance and Reporting Requirements.

The PL is responsible for ensuring three basic actions are accomplished in parallel to comply with most federal environmental and historical laws before VA can execute an EU lease. The PL is required to report on these environmental and historical preservation actions with documentation in CAMS within 10 business days of completion.

a. **Hazardous Substances.** The first action is to investigate the property (buildings and/or land) being proposed for EU leasing to identify the presence or likely presence of any hazardous substances and/or contaminants, including those as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (Title 42 U.S.C. §§ 9601-9675), and/or asbestos-containing materials, lead-containing materials, radioactive substances, or petroleum products contained in below or above-ground storage tanks.

(1) **Phase I Environmental Site Assessment.** The investigation and documentation process should be conducted in accordance with the American Society for Testing and Materials (ASTM) E 1527 (latest edition) “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.”

(2) **Phase II Environmental Site Assessment.** If contamination is discovered, the originating organization may have to perform additional investigations to better define and quantify contamination using the ASTM E 1903 (latest edition) “Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process.” The information gathered will be useful in project planning and feasibility, lease negotiation and drafting, and complying with federal real property laws and regulations regarding disclosure to a lessee of environmental contamination and hazardous substances on the leased property.

(3) **Phase III Environmental Remediation.** If the Phase I or II results demonstrate a need for any environmental remediation or abatement, VA or the developer (on behalf of VA) will need to conduct an appropriate Phase III environmental remediation.

b. **National Environmental Policy Act.** The second action is to analyze and determine pursuant to the National Environmental Policy Act (NEPA) (Title 42 U.S.C. §§ 4321-4370d), whether the proposed EU lease is a federal action that would significantly affect the quality of the human environment. Procedural requirements for NEPA and documentation standards for an Environmental Assessment (EA), Environmental Impact Statement (EIS), or Finding of No Significant Impact (FONSI) are defined in NEPA and federal implementing regulations, including VA’s implementing regulations located at Title 38 C.F.R. Part 26. NEPA requires VA to examine and analyze a broad range of environmental impacts (both positive and negative as well as short and long term) potentially associated with the lease, including aesthetics, air quality, cultural or historic resources, floodplains and wetlands, economic activity, geology and soils, hydrology and water quality, land use and zoning, impacts on roads and traffic, noise, real property, surrounding populations, solid and hazardous waste, public utilities, and vegetation and wildlife. NEPA also requires VA to identify and assess the environmental

impact of VA taking “no action” or taking other reasonable alternative actions other than carrying out the proposed EU lease. For further information, refer to the Office of Construction and Facility Management’s technical information library at: https://vaww.va.gov/facmgt/standard/env_idx.asp

c. National Historic Preservation Act. The third action is compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (Title 16 U.S.C. § 470, et seq.). Through NHPA, Congress has mandated federal agencies to integrate historic preservation planning and stewardship of its historic properties into their mission activities, including full consideration of potential adverse effects on VA properties listed or determined to be eligible for listing on the National Register of Historic Places maintained by the Department of the Interior. Therefore, caution must be used to avoid the transfer, sale, demolition, alteration, or deterioration of historic properties in violation of federal law (e.g., NHPA) and any existing or future agreements between VA and the State’s Historical Preservation Office. If certain structures on the proposed site are listed or eligible for being listed as historic, then all applicable Federal preservation regulations and reviews must comply with sections 106 and 110 of the NHPA. Evidence showing compliance and proposed compliance with these sections of the NHPA will be required before the lease can be executed.

d. VA’s Web Site. For additional guidance on VA policy and regulations pertaining to historic preservation, refer to VA’s Web site at <https://vaww.va.gov/facmgt/historic/>. This includes VA’s policies and procedures for historic preservation: VA Directive 7545, “Cultural Resource Management Policy,” and VA Handbook 7545, “Cultural Resource Management Procedures”.

15. Appraisal and Reporting Requirements. A real estate appraisal is a professional, written estimate of the target property’s current fair market value as determined by an impartial party with knowledge of the local real estate markets. A primary purpose of the appraisal is to establish the highest and best use for the property, if outleased to a preferred developer/lessee. It should identify a reasonable, probable and legal use for the vacant, unimproved or improved land which is physically possible, appropriately supported through market demand, financially feasible, and results in the highest level of monetary and/or in-kind consideration to VA. In doing so, VA may use the appraisal to establish a value of the leasehold property interest that VA will be conveying to the preferred developer/lessee and determine the appropriate level of consideration that VA should receive in exchange for the EU lease. Thus, the appraisal serves as an invaluable negotiation tool for VA when negotiating the terms and conditions of the lease with the preferred developer/lessee. See Reference F for a sample appraisal Scope of Work.

a. Project Financing. Regardless of the business, legal or financing structures, or capital market techniques to be used, the financial feasibility of the proposed EU lease project lies partly in the location and value of the VA real estate and improvements involved. Although different financing structures can be explored, depending on VA’s particular development objectives, they typically do not add intrinsic economic value to the project. The value of the VA real property interest to be conveyed to the developer, which it will use to secure project financing, is determined first by the nature of the real

estate itself, including its improved state. The economic value of the VA real property and the project itself is typically based upon the concepts that: federal land is unique in its location and composition; is physically immobile; is durable; is a finite commodity; and is useful and beneficial to people.

b. Real Estate Advisory Services. Property valuations needed to support an EU lease project development and the applicable VA justifications must be performed by certified real estate professionals. As a result, all professional services (e.g., market, financial, and real estates services) in support of EU leasing initiatives may be obtained via an approved EU Real Estate Advisory Services IDIQ task order request, as described above in Paragraph 4a of this section.

c. Market Value. It is important to keep in mind that VA's EU leasing statute (Title 38 U.S.C. §§ 8161-8169) requires that each EU lease shall be for fair consideration, as determined by the Secretary. This is a key point since commercial appraisals primarily focus on analyzing "market value," which is the most probable price in cash, terms equivalent to cash, or in other revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for their self-interests, and without undue duress. Given these considerations, it is possible that "fair consideration" to VA may or may not equal an appraiser's opinion of the real property's "market value." The appraisal process is not a scientific process but is rather an educated guess of market value, at a particular time. VA must ensure each appraisal takes into account all pertinent criteria (i.e., the proposed land use on the target EU lease property) when assessing the value differential between the "market value" and "fair consideration."

d. Reporting. The PL is required to report the appraisal and attach supporting documentation in CAMS within 10 business days of completion.

16. Business Case Application (OMB 300). Pursuant to guidance from the Office of Management and Budget (OMB), OAEM will, as described more fully in the "Significant Projects" section below (upon conclusion of the public hearing), provide a determination of the "significance" of each EU lease project, and the PL will proceed accordingly. A Business Case Application template is shown in Reference N.

Additional Notes for Re-Delegated Projects: For re-delegated projects, a business case application (OMB 300) must be submitted as well as a draft lease, appraisal, environmental documents, and any financial and legal term sheets into CAMS.

Significant Projects. The PL will ensure submission of a business case application (OMB 300) in CAMS. This application builds upon the information provided in the concept paper but requires greater detail and analysis. The forms for business case applications are located in the CAMS Agreements database at <https://www.cams-agreements.aac.va/ProSight/>. As mentioned in Section 5.a.1.above, a unique password and security permission must be obtained in order to access and use the Agreements database. The CAMS access request form is available at <https://vaww.va.gov/oaem/>. If the server is not available after hours, contact the Austin Automation Center (AAC) help

desk at 512-326-6780. For assistance in completing the applications, “business process procedures” (BPPs) have been developed for various specific projects. To obtain access to all BPPs, refer to the OAEM Web site at <https://vaww.va.gov/oaem/>.

Strategic Management Council. OAEM will forward the application for approval by the Strategic Management Council (SMC) for initiatives that meet established thresholds (combined contributions from VA and developers that exceed \$10.0 million present value). This application will include a Notice of Intent to Enter (NOIE) into an enhanced-use lease containing the information required by Title 38 U.S.C. § 8163(c)(4) (see Section 17) as an attachment to the VA Exhibit 300. EU leases approved by the SMC may be forwarded by OAEM to OMB for clearance prior to submission to the Secretary for signature and dispatch to the congressional veterans’ affairs committees, as mandated by law.

Non-Significant Projects. For initiatives that fall below the minor construction threshold (currently not to exceed \$10 million), each PL will prepare and submit to the Secretary, through OAEM, a NOIE containing the information required by Title 38 U.S.C. § 8163(c)(4) (see Paragraph 17.a. of this section) along with appropriate documentation containing concurrences from the Offices of General Counsel, Congressional and Legislative Affairs, Security and Law Enforcement, and the Veterans Canteen Service (if canteen activities are impacted).

17. Congressional Notice of Intent to Enter into an Enhanced-Use Lease. The NOIE is a formal notice to VA’s congressional oversight committees mandated by the EU leasing statute and must be submitted at least 45 days prior to entering into an EU lease. Concurrently with issuing the NOIE, VA also must inform the public of the Secretary’s intent by publishing a notice in the Federal Register.

NOIE Requirements. The NOIE must contain the following:

- (1) Identification of the EU lease property
- (2) Background, rationale, and economics supporting the project
- (3) Appraisal
- (4) Draft Lease
- (5) Financial analysis
- (6) Environmental site condition (EIS or FOSI, NEPA, CERCLA, NHPA, and NHPA)
- (7) Summary or the views received at the public hearing and the Secretary’s evaluation of them
- (8) Description of the significant lease provisions and a cost-benefit analysis
- (9) Description of how the lease would:
 - (a) Contribute in a cost-effective manner to, not be inconsistent with, nor adversely affect VA’s mission;
 - (b) Improve veterans’ services in the lease’s geographic service delivery area; and,
 - (c) Affect veterans’ services.

Sample NOIE. Reference O contains a sample NOIE package.

18. Lease Development, Finalization and Reporting Requirements. The lease can be finalized and executed 45 calendar days after the NOIE is signed by the Secretary, sent to Congress, and published in the Federal Register. During the lease development and finalization stage, OGC and the Regional Counsels assigned to re-delegated projects will have responsibility for all legal matters involved in lease development and finalization. OGC, assigned Regional Counsels, and contract attorneys (as needed) will assist in the development of and be responsible for drafting the enhanced-use lease, ensuring that the document is complete, and ensuring that the lease contains all necessary exhibits/attachments. A sample lease is available in Reference L on the OAEM Web site at <https://vaww.va.gov/oaem/>. This sample is provided for information general purposes only, may not be appropriate for the specific project being considered, and may not be representative of current terms and legal requirements. Accordingly, such documents must not be released outside of the agency.

CHAPTER 6 – EXECUTION PHASE

1. The signing of the enhanced-use lease is the benchmark for the project's transition from the formulation phase to the execution phase. The PL assigned to the EU lease project is required to attach the signed lease and associated agreements in CAMS within 10 business days of execution. The PL is also responsible for the ongoing CAMS reporting requirements and updates throughout the course of project execution.

2. During any construction associated with the lease, the PL may, at the determination of the DVR/DLVR, be assisted by a VA Resident Engineer to assure that such construction is conducted and completed in compliance with the requirements of the lease.

3. Administration Responsibilities.

Project Leader Responsibilities. The PL will serve as VA's representative during the construction/renovation period and is responsible for overseeing post-execution lease administration. If the project is subject to any limitations stated elsewhere, the DVR is authorized as the Secretary's designated official to administer the EU lease and to undertake the necessary action measures to ensure prompt performance of all necessary actions and compliance with the terms and conditions of the lease. However, the PL is responsible for the following duties:

(1) **Monitoring.** Monitor developer's performance of its respective responsibilities (including but not limited to: physical inspections, design and construction document review, site visits and inspections, making inquiries, and other actions) per the terms and conditions of the EU lease. Such monitoring includes the performance of those entities acting for, on behalf of, or pursuant to the developer's rights under the lease. (Note: The appropriate level and scope of VA's review of the EU lessee's and its representatives activities will vary, depending on the particular type of EU lease project involved. For example, VA may have a greater interest in reviewing other parties' activities and obligations if VA plans to occupy space in the EU lease facility or if the contemplated service will have a direct impact on VA's missions or operations.)

(2) **Lease Enforcement.** Enforce the lease and advise the DVR/DLVR of the need for VA to send correspondence to the developer or his/her designated representative of any instance of failure to perform under the terms and conditions of the lease.

(3) **Recommendations.** Recommend to the DVR/DLVR actions needed by VA to address the developer's failure to perform under the terms and conditions of the lease.

(4) **Developer Changes.** Review, coordinate, and recommend to the DVR/DLVR any developer-requested changes to its design plan, development plan and/or operations and maintenance plan or to its performance/provision of agreed in-kind consideration to VA.

(5) **VA-Requested Changes.** Coordinate, negotiate, and with assistance from the OGC and assigned Regional Counsels, prepare requested changes to service

agreements with the EU lessee. Please note all such changes initiated by the designated official on a re-delegated project shall have a net result impact of zero (0) dollars.

(6) **Disputes.** Prepare all necessary documentation, findings and determinations regarding any disputes arising between VA and the developer. (Note: During the EU lease term, an EU lessee may seek to and/or file an EU lease-related complaint, claim, or dispute with VA or an adjudicative entity as having legal jurisdiction over the matter. The PL should promptly contact the DVR upon learning that a complaint, claim, or dispute has been or soon will be filed. Depending upon the circumstances, the DVR may require the PL to prepare and submit all relevant materials concerning the matter to the DVR, so such items can be reviewed and assessed (with General Counsel if necessary), in part on whether a written “final decision,” or settlement offer should be issued to the complainant.)

(7) **Amendments.** If an amendment is sought, it must be submitted through OAEM to Assistant Secretary for Management (AS/M). The PL should prepare all necessary documentation, justification and approval prior to submitting to AS/M through DVR.

(8) **VA Compliance.** Assure that VA complies with the EU lease terms and conditions, including meeting its obligations for timely reviews, notices and consents (or rejections).

CHAPTER 7 – STEADY STATE PHASE

Lease Administration. The completion, acceptance, and commencement or activation date of any development or improvements required by the EU lease trigger the transition of the project from execution phase to the steady state phase. The DVR/DLVR will assign the responsibility of monitoring and oversight of the project to the PL. The PL's responsibilities consist of the overall monitoring and management of the EU lease to include its performance and provision of agreed-upon in-kind consideration to VA, and compliance with lease requirements. Such responsibility will not include the authority to execute any amendments/modifications to terminate the EU lease and/or its exhibits, as this responsibility resides with the AS/M. The PL should promptly contact the DVR/DLVR upon learning of any likely amendments/modifications to or terminations of the lease, as proposed by the developer/lessee.

CHAPTER 8 – OTHER RESPONSIBILITIES

1. Deposits of Monetary Proceeds. All monies paid to VA as proceeds from EU leases, less deductions of approved expenses as discussed in Paragraph 3.c. below, shall be promptly deposited into the Medical Care Collections Fund (MCCF) pursuant to Title 38 U.S.C. § 8165(a)(1) and thereafter administered in accordance with Title 38 U.S.C. § 1729A or other applicable provision(s) of law, regulations, and procedures. For specific guidance on the EU payment process, see Reference P on the OAEM Web site at <https://vaww.va.gov/oaem/>.

2. Use of Funds. Prior to deposit of any EU lease proceeds, expenses incurred in any fiscal year in connection with an EU lease may, pursuant to Title 38 U.S.C. Section 8165, be deducted from the proceeds of the lease for that fiscal year and may be used to reimburse the account originally used to pay the expenses. With the approval of the Secretary, proceeds may also be used to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional EU leases.

3. EU Reimbursement Policy and Procedures. Each executed EU lease project managed by OAEM may be subject to a reimbursement fee to be charged against the proceeds from the project. This charge is designed to reimburse OAEM and the Office of General Counsel for direct and indirect project-related expenses associated with planning, developing, executing, managing and providing legal advice and services for the respective EU project, transactions and lease. This fee is not to exceed reasonable VA expenses.

a. **Departmental Asset Initiatives.** OAEM will assess the reimbursement charge on all EU transactions and leases determined to be “Departmental Asset Initiatives.” For this purpose, such initiatives are considered significant EU transactions developed and managed by OAEM.

b. **Project Financing.** Depending on the availability of financing and/or proceeds from the project, a fee may be collected at lease execution or upon closing of project financing, as determined by OAEM. Further reimbursement to cover ongoing expenses may be collected not more than annually.

c. **Reimbursements.** Reimbursement is subject to adjustment and may be waived by OAEM when proceeds of the EU lease project are not reasonably sufficient to reimburse VA’s expenses.

CHAPTER 9 - TERMINATION AND DISPOSAL PHASE

Under Title 38 U.S.C. § 8164, if the Secretary determines during the term of an EU lease or within 30 days of its expiration, that the leased property is no longer needed by the Department, he may initiate action to transfer to the lessee all rights, title, and interest of the United States in the property. Before doing so, however, the Secretary must also determine that a disposal under this section, rather than under Title 38 U.S.C. §§ 8118 or 8122, is in the Department's best interest. Furthermore, the Secretary must provide notice (a "Notice of Intent to Dispose") to the congressional veterans' affairs committees not less than 45 days before a disposition is made, and publish the notice in the Federal Register. Disposal authority may not be delegated. In addition, funds received by the Department from a disposal of leased property under Title 38 U.S.C. § 8164 will be deposited, as determined by the Secretary, in either designated major or minor construction accounts or the VA Capital Asset Fund established under Title 38 U.S.C. § 8118. Refer to the OAEM Web site at <https://vaww.va.gov/oaem/> for further information.