

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE**  
**CHAPTER 119 - HOMELESS ASSISTANCE**  
**SUBCHAPTER V - IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY**

**§ 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless**

**(a) Identification of suitable property**

The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524 (a)(2) and (3) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

**(b) Availability of property**

**(1)** The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a) of this section. No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

**(A)** in the case of unutilized or underutilized property—

**(i)** a statement of intention to determine the property excess to the agency's needs;

**(ii)** a statement of intention to make the property available for use to assist the homeless; or

**(iii)** a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

**(B)** in the case of excess property—

**(i)** a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

**(ii)** a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

**(2)** **(A)** All properties identified by the Secretary under subsection (a) of this section shall be available for application—

**(i)** in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and

**(ii)** in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550 (a)–(d) of title 40.

**(3)** The Secretary shall maintain a written public record of—

**(A)** the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

**(B)** the responses of landholding agencies to such identifications.

**(c) Publication of properties**

**(1)** **(A)** No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall publish in the Federal Register—

- (i) a list of all properties reviewed by the Secretary under subsection (a) of this section; and
  - (ii) a list of all properties that are available under subsection (b)(2) of this section for application for use to assist the homeless.
- (B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.
- (C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.
- (D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.
- (2) (A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the United States Interagency Council on Homelessness. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.
- (B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.
- (C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.
- (3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.
- (4) (A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—
- (i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and
  - (ii) remains available for application for use to assist the homeless or has become available for application during that year.
- (B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.
- (C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) of this section if—
- (i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or
  - (ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

**(d) Holding period**

- (1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.
  - (2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.
  - (3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the United States Interagency Council on Homelessness.
  - (4)
    - (A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under sections 541–555 of title 40, except as provided in subsection (f)(3)(A) of this section.
    - (B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.
- (e) **Application for property**
- (1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless.
  - (2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.
  - (3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.
- (f) **Making property available to representatives of homeless**
- (1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly available by permit or lease, or by deed as a public health use under section 550 (a)–(d) of title 40, to the representative of the homeless that submitted the application.
  - (2) Unutilized or underutilized property that is the subject of an agency’s statement of intention under subsection (b)(1)(A)(ii) of this section shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.
  - (3)
    - (A) In disposing of surplus property by deed or lease under sections 541–555 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health

and Human Services determines that a competing request for the property under section 550 of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

**(B)** Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

**(4)** For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 550 of title 40. The lease term shall not be affected if a deed is not granted.

**(g) Records**

The Secretary shall maintain a written public record of—

- (1)** the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and
- (2)** the responses of landholding agencies under subsection (b)(1) of this section.

**(h) Applicability to property under base closure process**

- (1)** The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note ) after October 25, 1994.
- (2)** For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note ), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**(i) Definitions**

For purposes of this section—

- (1)** the term “Administrator” means the Administrator of General Services;
- (2)** each of the terms “excess property” and “surplus property” has the meaning given that term under section 102 of title 40;
- (3)** the term “landholding agency” means a Federal department or agency with statutory authority to control real property;
- (4)** the term “representative of the homeless” means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and
- (5)** the term “Secretary” means the Secretary of Housing and Urban Development, except as otherwise provided.

(Pub. L. 100–77, title V, § 501, July 22, 1987, 101 Stat. 509; Pub. L. 100–628, title V, § 501, Nov. 7, 1988, 102 Stat. 3240; Pub. L. 101–645, title IV, § 401(a), Nov. 29, 1990, 104 Stat. 4719; Pub. L. 102–484, div. B, title XXVIII, § 2824, Oct. 23, 1992, 106 Stat. 2608; Pub. L. 103–421, § 2(d), Oct. 25, 1994, 108 Stat. 4352; Pub. L. 108–199, div. G, title II, § 216(4), Jan. 23, 2004, 118 Stat. 394.)

## References in Text

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (h), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscp.html>).

Title II of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (h)(2), is title II of Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2627, as amended, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

Section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994, referred to in subsec. (h)(2), is section 2(e) of Pub. L. 103–421, which is set out as a note under section 2687 of Title 10.

## Codification

In subsec. (a), “section 524 (a)(2) and (3) of title 40” substituted for “section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 (b)(2))”, in subssecs.(b)(2)(A)(ii) and (f)(1), “section 550 (a)–(d) of title 40” substituted for “paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 (k)(1) and (4))”, in subssecs. (d)(4)(A) and (f)(3)(A), “sections 541–555 of title 40” substituted for “section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)”, in subsec. (f)(3)(A), “section 550 of title 40” substituted for “section 203(k) of such Act”, meaning the Federal Property and Administrative Services Act of 1949, in subsec. (f)(4), “section 550 of title 40” substituted for “section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 (k))”, and, in subsec. (i)(2), “section 102 of title 40” substituted for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)”, on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

## Amendments

2004—Subsecs. (c)(2)(A), (d)(3). Pub. L. 108–199 substituted “United States Interagency Council on Homelessness” for “Interagency Council on the Homeless”.

1994—Subsecs. (h), (i). Pub. L. 103–421 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (c)(4)(C). Pub. L. 102–484, § 2824(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “For purposes of subparagraph (A), property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60-day holding period provided under subsection (d) of this section—  
“(i) no application or written expression of interest has been made under any law for use of the property for any purpose; and

“(ii) the Administrator has not received a bona fide offer to purchase the property or advertised for the sale of the property by public auction.”

Subsec. (f)(2). Pub. L. 102–484, § 2824(b), inserted “or” after “Unutilized”.

1990—Pub. L. 101–645 amended section generally, substituting present provisions consisting of subssecs. (a) to (h) for former provisions consisting of subssecs. (a) to (e).

1988—Pub. L. 100–628, § 501(1), substituted “unutilized and underutilized” for “underutilized” in section catchline.

Subsec. (a). Pub. L. 100–628, § 501(2), substituted “unutilized or underutilized” for “underutilized” in heading and text and inserted “, within 2 months after collecting such information,” before “shall identify” in text.

Subsec. (b)(1). Pub. L. 100–628, § 501(3)(A), inserted “or to make the property available, on an interim basis, for use as facilities to assist the homeless” after “agency’s need”.

Subsec. (b)(2). Pub. L. 100–628, § 501(3)(B), inserted before period at end “or made available on an interim basis for use as facilities to assist the homeless”.

Subsec. (d). Pub. L. 100–628, § 501(4)(A), struck out “by lease” after “property” in heading.

Subsec. (d)(1). Pub. L. 100–628, § 501(4)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Federal buildings or property may be made available under this section only through the use of leases for at least 1 year. Ownership of the buildings and property shall not be transferred from the Federal Government.”

Subsec. (d)(2). Pub. L. 100–628, § 501(4)(C), substituted “With respect to property identified under subsection (a) which has been designated as surplus property,” for “To permit leases of surplus Federal buildings and other real property under this section,”.

## Effective Date of 1990 Amendment

Section 401(b) of Pub. L. 101–645 provided that: “The amendment made by subsection (a) [amending this section] shall be effective 90 days after the date of the enactment of this Act [Nov. 29, 1990].”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

## Regulations

Section 401(d) of Pub. L. 101–645 provided that: “No later than 90 days after the date of the enactment of this Act [Nov. 29, 1990], the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section [amending this section and enacting provisions set out as notes under this section].”

### **Consultation and Report Regarding Use of National Guard Facilities as Overnight Shelters for Homeless Individuals**

Pub. L. 102–550, title XIV, § 1411, Oct. 28, 1992, 106 Stat. 4039, provided that:

“(a) Use of Available Space at National Guard Facilities.—The Secretary of Housing and Urban Development shall consult with the chief executive officers of the States and the Secretary of Defense to determine the availability of space at National Guard facilities for use by homeless organizations in providing overnight shelter for homeless persons and families. The Secretary of Housing and Urban Development shall determine the availability of only such space that can be used for shelter purposes during periods it is not actively being used for National Guard purposes. The Secretary of Housing and Urban Development shall also determine the availability of incidental services at such facilities, including utilities, bedding, security, transportation, renovation of facilities, minor repairs undertaken specifically to make available space in a facility suitable for use as an overnight shelter for homeless individuals, and property liability insurance.

“(b) Limitations.—In consultations under this section, the Secretary of Housing and Urban Development shall determine—

“(1) the number and capacity of such facilities that may be made available for shelters for homeless persons and families without adversely affecting the military or emergency service preparedness of the State or the United States; and

“(2) whether any available space is suitable for use as an overnight shelter for homeless individuals or can, with minor repairs, be made suitable for that use.

“(c) Report.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992], a report regarding the consultations and determinations made by the Secretary under this section. The report shall include any recommendations of the Secretary regarding the need for, and feasibility of, using National Guard facilities for homeless shelters and any recommendations of the Secretary for administrative or legislative action to provide for such use.”

### **Unutilized and Underutilized Property for Purposes of 1990 Amendment**

Section 401(c) of Pub. L. 101–645, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “For purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) (as amended by this Act) the terms ‘unutilized’ and ‘underutilized’ when used to describe property have the same meaning such terms had before the date of the enactment of this Act [Nov. 29, 1990] under such section 501.”