

SECTION 4-2 REAL ESTATE ACQUISITION

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4-2-00 POLICY

The purpose of this section is to establish HHS policy for the acquisition of real property through purchase, donation or transfer. The acquisition of real property through leasing is addressed in Section 4-7.

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner in accordance with the Federal Management Regulation (FMR) §102-73. It is HHS policy that (a) only such real property as is needed for effective program operation be acquired, and then only after requisite authorization and clearances; (b) private property may be acquired or improvements constructed only if suitable Government-owned facilities are not available; and (c) wherever practicable, HHS activities in the same city or town should be located in the same building.

No agency or element of HHS will undertake any discussion of prospective geographical areas or locations for sites or facilities with persons outside the Department without the approval of the Assistant Secretary for Administration and Management (ASAM), OS if the area under consideration extends into more than one region.

A. BASIC ACQUISITION AUTHORITIES

The principal statutes authorizing the acquisition of land and the provision of space are the following:

1. Section 304(b)(4) of the PHS Act (42 U.S.C. 242b) authorizes the Secretary of HHS to acquire, construct, improve, repair, operate, and maintain laboratory, research and other necessary facilities and equipment, and such other real or personal property as the Secretary deems necessary for health statistical activities and health services research, evaluation, and demonstrations.
2. Section 321 of the PHS Act (42 U.S.C. 248) authorizes the Secretary, with the approval of the President, to select sites for and to establish such institutions, hospitals, and stations as are necessary to enable HHS to discharge its functions and duties. The President's authority to approve facilities has been delegated by him to the Director of the Office of Management and Budget (OMB).
3. Section 413(b)(6)(A) of the PHS Act (42 U.S.C. 285a-2) authorizes the Director of the National Cancer Institute (NCI), NIH/HHS (in consultation with the advisory council for the Institute) to acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary.
4. Section 413(a) of the PHS Act (42 U.S.C. 285b-3) authorizes the Director of the National Heart, Lung, And Blood Institute (NHLBI), NIH/HHS (after consultation with the National Heart and Lung Advisory Counsel) to acquire such real property as may be necessary.

5. Section 386 of the PHS Act (42 U.S.C. 286a-1) authorizes the Administrator of General Services to acquire suitable sites, selected by the Secretary of HHS in accordance with the directions of the Board of Regents of the National Library of Medicine (NLM), NIH/HHS and to erect thereon, furnish, and equip suitable and adequate buildings and facilities for NLM. It also authorizes appropriations for the erection and equipment of buildings and facilities for the use of the Library.
6. Section 13 of Public Law 67-85 (known as the Snyder Act) (25 U.S.C. 13) authorized the Bureau of Indian Affairs to expand, improve, repair, operate and maintain buildings and grounds of existing plants and projects and irrigation systems and develop water supplies serving Indians.
7. Section 7 of Public Law 83-568 (known as the Indian Health Transfer Act) as amended (42 U.S.C. 2004), transferred authority for the construction, improvement, and extension of buildings and grounds and sanitation systems to serve Indians including the acquisition of lands, or rights or interests therein, to the Public Health Service of the Department of Health and Human Services.
8. Section 402(b)(4)(A) of the PHS Act (42 U.S.C. 282(b)(4)(A)) provides land acquisition authority to the Director of the National Institutes of Health (NIH).
9. Section 464P(b)(3) of the PHS Act (42 U.S.C. 285o-4(b)(3)) provided land acquisition authority to the Director of the National Institute of Drug Abuse (NIDA) in certain circumstances.

B. TITLE TO FEDERAL REAL PROPERTY

With certain minor exceptions, title to all Federal real property is held in the name of the United States of America. The HHS does not hold title to any real property in its own name. That is so because neither the HHS nor any official thereof has the statutory authority to hold title to real property, such as do certain Government corporations and officials of certain agencies in connection with their lending authorities.

Title to real property acquired by the HHS is taken in the name of the United States of America, and the deed transferring such title is recorded in the appropriate local land records. Transfers of control and accountability to or from other Government agencies are not so recorded because title thereto continues to be vested in the United States of America. Such transfers are usually made administratively through the General Services Administration (GSA).

There is no general repository of Federal land records for lands owned by the United States, although GSA maintains an inventory based on data submitted by the agencies having control and accountability (see Section 2-6, Real Property Inventory Reporting Requirements). Verify this reference, 2-6 is Site Selection in Volume 1. This emphasizes the importance of HHS keeping accurate and complete records of its real property holdings. They play an important role in determining whether the real property is effectively utilized and whether statutes and regulations are fully executed.

There are a few statutes, such as section 321 of the PHS Act (42 U.S.C. 248), authorizing HHS to acquire sites and to construct facilities so that it may carry out its functions. Such space, wholly or predominantly used for the special purposes of HHS and not generally suitable for the use of other agencies, is referred to as "special purpose" space. Other space, primarily space used for office or storage purposes, is called "general purpose" space. Generally, such space is acquired by GSA and administratively assigned to HHS.

4-2-10 PROCEDURES

A. ACQUISITION BY PURCHASE

All acquisitions of land require specific statutory authority, 41 U.S.C. 14, and specifically designated funding in an OPDIV's budget and/or appropriation. All land acquisitions must be submitted to and approved by the HHS Capital Investment Review Board. See also Section 2-1 Funding Sources for Facilities Projects.

After the Secretary concurs that the Department will acquire the property under its own authority, and after adequate funds are apportioned for such a purpose, the HHS OPDIV will proceed with the purchase. Generally all acquisitions of land or buildings and the underlying land, should be accomplished by the OPDIVs consistent with the "Department of Justice Title Standards 2001," which is also available online at the Department of Justice (DOJ) web site. The land acquisition process is conducted and staffed by the OPDIV acquiring the real property.

The OPDIV will obtain, from the owner(s) of the property, for a period of at least 90 days, an option to purchase the preferred site, subject to the establishment of just compensation by appraisal in accordance with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646).

An appraiser, approved by the U.S. Attorney having jurisdiction over the area in which the property is located, will be used to establish the amount which he/she believes to be just compensation. The cost of the appraisal will be determined by negotiation.

After a price has been agreed to, the OPDIV will coordinate the acquisition with the Office of the General Counsel (OGC) and/or the Office of Chief Counsel who will play a vital advisory role in all real property acquisitions. As advisors, OGC and the Office of Chief Counsels provide legal advice as requested by the OPDIVs throughout the process, prepare and execute requests to DOJ for required Preliminary and Final DOJ Title Opinions, and if requested, would assist in drafting such documents as the "contract of sale" and the draft deed.

The OPDIV will prepare the necessary purchase commitment documents consisting of (1) contract of sale, (2) draft of deed, (3) authority to execute the deed, (4) title policy commitment, and (5) a survey prepared by a registered surveyor.

After receiving advice from the Attorney General that the site acquisition documents are complete, including a satisfactory title opinion, payment, by U.S. Treasury check, may be made. The original site purchase documents will be retained by the OPDIV, with a CD-ROM copy provided to OFMP, after they are recorded with the registry of deed in the area where the property is located.

B. PURCHASE OF BUILDINGS

The purchase of buildings shall be in accordance with the FMR §102-73.240 through 73.250 including compliance with the location policies in FMR §102-73 and §102-83. See Exhibit X4-7-A for guidance on Suggested Award Factors & Evaluation of Buildings and Sites.

C. PURCHASE OF LAND

The purchase of land shall be in accordance with FMR §102-73.255 through 73.260 and shall follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Polices Act, 42 U.S.C. 4651-4655. See Section 2-6 Site Selection for guidance on evaluating sites for purchase.

D. ACQUISITION BY DONATION

1. **Donations of Real Property:** The procedures for acquiring real property by gift or donation are set forth in this section. The sequential steps relating to acquisition by purchase will generally be followed. Although statutory authority to accept gifts obviates the need for returning to the Treasury an amount equal to the value of the gift, an appraisal is required. The cost of the appraisal must be borne by the OPDIV. OGC will review the formal offer of donation prior to requesting a title opinion from the Attorney General. The opinion must be received before the land is accepted on behalf of the United States.

On October 11, 2005, the Secretary delegated authority to the Assistant Secretary for Administration and Management (ASAM) to accept gifts of real property under Section 231 of the Public Health Service Act (42 U.S.C. 238) and 25 U.S.C. 451, as amended. ASAM redelegated this authority to the Deputy Assistant Secretary for Facilities Management and Policy on October 21, 2005.

HHS Procedures for Processing Offers of Gifts of Real Property:

- The applicable HHS OPDIV presents the offering organization's formal written proposal of gift of real property and the OPDIV's program analysis to OFMP for review. The program analysis must contain supporting documentation that the gift is mission related, mission dependent, and does not constitute a conflict of interest. Any conditions regarding Departmental acceptance or use must also be clearly identified.
 - If OPDIV program analysis supports and recommends acceptance, and OFMP is in agreement, OFMP will transmit the written offer and program analysis document to OGC for a legal opinion of the offer. OGC will review the offer and analysis to determine whether the proposed donation of land is within the Department's statutory gift acceptance authority and to assess if any legal requirements, conditions or encumbrances are imposed on the Department by acceptance of the gift.
 - If HQ offices concur, and the gift has a value of \$10 million or involves land acquisition, the proposal is presented to the Capital Investment Review Board for approval. If the Board approves, the delegation procedure noted below will be implemented by OFMP.
 - If HQ offices concur and the gift is valued at less than \$10 million and land acquisition is not part of the gift, OFMP will issue a specific delegation of authority to the applicable PHS agency to accept the gift of real property in accordance with all Departmental policies, procedures, and requirements outlined in the HHS Facilities Program Manual Volume 2 and Federal regulations and statutes.
2. Section 231 of the Public Health Service Act (42 U.S.C. 238) and 25 U.S.C. 451, as amended are the overriding statutes authorizing the acceptance of gifts of real property (usually unconditional but sometimes conditional) by or on behalf of HHS. Additional relevant statutes include:
 - a. 42 USC 289f authorizes the Secretary of HHS to accept conditional gifts, including real property, for the benefit of the National Institutes of Health.
 - b. Section 22 of the Occupational Safety and Health Act (29 U.S.C. 671) authorizes the Director of the National Institute of Occupational Safety and Health, CDC/HHS to accept conditional or unconditional gifts for the benefit of the Institute.

E. ACQUISITION BY TRANSFER

Property which is excess to the needs of another department or agency of the Government may be requested for use by HHS when the requirements of acquisition set forth herein are met, and it has been established that the transfer will prove more economical over a sustained period of time than the

acquisition of a new facility specifically designed to satisfy the program requirement. Transfer of property must be made under the Federal Property and Administrative Services Act of 1949 and FMR §102-75 including the requirement for 100% reimbursement, except as noted otherwise.

The OPDIV will be responsible for initiating the transfer request, obtaining program approvals and funding commitments, and preparing the Request for Transfer (GSA Form 1334). A copy of the Request for Transfer, together with supporting documents, will be forwarded to OFMP concurrently with the OPDIV's submittal to GSA.