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Disposition of Surplus Federal Property

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CRS Report for Congress

Disposition of Surplus Federal Property

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Summary

The General Services Administration's (GSA's) Office of Property Disposal administers the conveyance of surplus real property that the federal government no longer needs. Through GSA's public benefits conveyance program, these properties are made available to eligible entities in the public and private sectors. This report provides a brief overview of the current policy and procedure for conveying surplus real property by GSA to public agencies or to private individuals; and it discusses bills that would alter current arrangements so as to reduce federal inventories of excess, costly-to-maintain property.

Introduced on July 16, 2007, S. 1667 would require the creation of a five-year pilot project for the expeditious disposal of unneeded federal real property. On April 7, 2008, S. 1667, as amended, was reported favorably out of committee and placed on the Senate Legislative Calendar under General Orders. Introduced on April 14, 2008, H.R. 5787 would, among other things, allow federal agencies to retain the net proceeds from the sale of surplus property and authorize GSA to assist agencies in preparing properties to be reported excess. On May 22, 2008, the House agreed to H.R. 5787, as amended in committee, and sent the bill to the Senate. This report will be updated as legislative action warrants.

Background¹

The General Services Administration, through its Public Buildings Service (PBS), is the primary federal real property and asset management agency, with a portfolio consisting of 8,847 buildings and structures with an estimated replacement value of \$68.8 billion in FY2006.² In addition to GSA, 27 other federal agencies have independent landholding authorities that enable them to acquire or construct specific types of buildings

¹ This report was originally written by Stephanie Smith, Analyst in American National Government, who recently retired from CRS.

² U.S. General Services Administration, The Federal Real Property Council, *FY2006 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, July 2007, p. 6.

or facilities.³ Investigations by the Government Accountability Office (GAO) have revealed that many properties in the federal inventory are not financially self-sustaining and are no longer relevant to their agencies' changing missions. GAO reported that GSA and other landholding agencies could give greater attention and funding to maintaining a streamlined federal inventory by identifying and disposing of unneeded properties.⁴ Vacant and underutilized federal properties are costly to maintain, GAO reported, and could be "put to more cost-beneficial uses, exchanged for other needed property, or sold to generate revenue" for the federal government.⁵ In June 2007, the Office of Management and Budget (OMB) reported that the federal government owned 18,393 excess assets with a replacement value of almost \$13.8 billion, and 3,409 surplus properties valued at approximately \$3.9 billion.⁶

GSA's Office of Property Disposal administers the disposal of real property that is no longer needed by executive branch agencies. Underutilized federal property can vary widely, and may include land, office buildings, warehouses, former post offices, farms, family residences, commercial facilities, or airfields located in the United States, Puerto Rico, the U.S. Virgin Islands, or the U.S. Pacific Territories.⁷ When a federal agency determines that it no longer needs a property to carry out its mandate, it reports the unneeded or excess property to GSA. As authorized by statute, GSA must first make an excess property available to other executive branch agencies.⁸ If GSA determines that another federal agency has a need for the excess property, the property is transferred to that agency in accordance with the authority delegated and regulations prescribed by the GSA Administrator.

Conveyance for Public Purposes

If GSA determines that there is no need for a federal property within the federal government, it becomes surplus property, and may be made available to state or local governments and qualified tax-exempt nonprofit institutions through GSA's public benefits conveyance (PBC) program.⁹ As authorized by statute (see **Table 1**), the GSA

³ Ibid. For additional information, see CRS Report RL32368, *The General Services Administration and Federal Real Property Management: Overview and Current Legislation*, by Stephanie Smith.

⁴ U.S. General Accounting Office, *High-risk Series: Federal Real Property*, GAO-03-122, January 2003, pp. 15-22. In 2004, GAO changed its name from the General Accounting Office to the Government Accountability Office (118 Stat. 811).

⁵ U.S. Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, GAO-06-511, June 2006, p. 1.

⁶ Executive Office of the President, Office of Management and Budget, *Response to Section 408 of Public Law 109-396*, June 15, 2007, p. 2.

⁷ U.S. General Services Administration, Office of Property Disposal, *Acquiring Federal Property for Public Uses*, p. 1, available at [<http://www.propertydisposal.gsa.gov>].

⁸ 40 U.S.C. § 524.

⁹ GSA has primary responsibility for the administration of the program, but, as required by statute (continued...)

Administrator has discretion to allow for the conveyance of real property at discounts of up to 100% of fair market value.

Table 1. Authorized Public Benefit Uses and Statutory Authorities

Public Benefit Use	Statutory Authority
Education	40 U.S.C. § 550(c)
Public health	40 U.S.C. § 550(d)
Parks and recreation	40 U.S.C. § 550(e)
Historic monument	40 U.S.C. § 550(h)
Wildlife conservation	16 U.S.C. § 667(b)
Public airport	49 U.S.C. § 47151
Correctional facility	40 U.S.C. § 553(b)(1)
Homeless assistance	42 U.S.C. § 11411
Port facility	40 U.S.C. § 554
Self-help housing	40 U.S.C. § 550(f)
Law enforcement	40 U.S.C. § 553(b)(2)
Emergency management response	40 U.S.C. § 553(b)(3)

Source: U.S. Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, GAO-06-51, June 2006, p. 7.

Seven federal agencies, referred to as sponsoring agencies, assist GSA with the PBC process.¹⁰ At least one sponsoring agency is designated for each type of public benefit use, according to an agency's policy expertise. For several public benefit uses, one sponsoring agency is responsible for reviewing and approving applications, while a different sponsoring agency is authorized to convey the surplus property (see **Table 2**).

⁹ (...continued)

(10 U.S.C. § 2687 note), has delegated conveyance authority to the Department of Defense (DoD) for DoD properties that are closed or realigned as part of the Base Realignment and Closure (BRAC) process. See, U.S. Government Accountability Office, *Federal Real Property: Most Public Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, p. 1.

¹⁰ The Department of Homeland Security (DHS), Department of Justice (DOJ), Department of Transportation (DOT), Department of Education (DOE), Department of Health and Human Services (HHS), Department of Housing and Urban Development (HUD), and the Department of the Interior (DOI).

Table 2. Federal Agencies that Administer Civilian Surplus Property

Public Benefit Use	Sponsoring Agency	Sponsoring Agency's Responsibilities	Length of Deed Restriction
Education	Dept. of Education	<ul style="list-style-type: none"> • Application review & approval • Deeding & conveyance • Compliance monitoring 	30 years
Public health	Dept. of Health & Human Services	<ul style="list-style-type: none"> • Application review & approval • Deeding & conveyance • Compliance monitoring 	30 years
Parks & recreation	Dept. of the Interior <i>Federal Lands to Parks Program</i>	<ul style="list-style-type: none"> • Application review & approval • Deeding & conveyance • Compliance monitoring 	In perpetuity
Historic monuments	Dept. of the Interior <i>Historic Surplus Property Program</i>	<ul style="list-style-type: none"> • Application review & approval • Compliance monitoring 	In perpetuity
	General Services Administration	<ul style="list-style-type: none"> • Deeding & conveyance 	
Wildlife conservation	Dept. of the Interior <i>U.S. Fish & Wildlife Service</i>	<ul style="list-style-type: none"> • Application review & approval^a 	In perpetuity
	General Services Administration	<ul style="list-style-type: none"> • Application review & approval^a • Deeding & conveyance • Compliance monitoring 	
Public airports	Dept. of Transportation <i>Federal Aviation Administration</i>	<ul style="list-style-type: none"> • Application review & approval • Compliance monitoring 	In perpetuity
	General Services Administration	<ul style="list-style-type: none"> • Deeding & conveyance 	
Correctional	Dept. of Justice	<ul style="list-style-type: none"> • Application review & approval 	In perpetuity
	General Services Administration	<ul style="list-style-type: none"> • Deeding & conveyance • Compliance monitoring 	
Port facility	Dept. of Transportation <i>Maritime Administration</i>	<ul style="list-style-type: none"> • Application review & approval • Deeding & conveyance • Compliance monitoring 	In perpetuity

Source: U.S. Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, p. 8.

- a. Unlike other sponsoring agencies that are authorized to review PBC applications, the statutory authority does not specify who is responsible for reviewing and approving wildlife conservation PBC applications. The Department of the Interior's Fish and Wildlife Service (FWS) provides this service when either the applicant or GSA requests that the agency provide a letter of endorsement for the proposed use. In cases where the assistance of FWS is not requested, GSA reviews and approves wildlife conservation PBC applications.

After GSA determines that the surplus property is suitable for conveyance, HUD is authorized to review the property to determine if it is appropriate for homeless use.¹¹ If the property is deemed suitable, it is first made available for homeless assistance for 60 days before being made available for all other public benefit uses.

An interested state or local government, or qualified non-profit organization, must respond with a formal application to the appropriate sponsoring agency within 20 days of GSA's notification that a property has been determined to be available for public conveyance. Based on the property's location, GSA also notifies appropriate regional officials and agencies which may be concerned about the property's ultimate use. The appropriate sponsoring agency reviews each formal application to determine the property's final disposition, and notifies GSA of the selected applicant. GSA assigns the surplus property to the sponsoring agency so that a deed can be finalized, and the property is formally conveyed to the grantee. Certain deed restrictions may be included, such as limitations on the property's use, length of time to develop or implement the approved use, and requirements to allow site inspections or utilization reporting requirements.¹²

Sales to the Public

A surplus property goes to public sale when GSA determines that there is no federal use for the property, or the surplus property is not deemed appropriate for public use conveyance. Properties may be sold to the private sector for fair market value through the competitive bid process. The process may include the use of a sealed bid competition, public auction, or mail auction. A 10% deposit of the total price must be submitted with the bid; deposits are returned to unsuccessful bidders. The winning bidder is required to purchase the property in its current condition, and is also responsible for securing financial arrangements.

Detailed information on procedures for the public to obtain surplus property can be obtained at [<http://gsaauctions.gov>]. Available properties are listed by state, and include specifications, photos, and auction dates.

Congressional Initiatives in the 110th Congress

Pilot Project. In mid-2007 companion bills were introduced in the House and Senate to create a five-year pilot project to test ways to accelerate the disposal of unneeded federal real property. On July 16, 2007, H.R. 3049 was introduced by Representative John Duncan and three cosponsors and referred to the House Committee on Oversight and Government Reform. No further House action has taken place.¹³

¹¹ 42 U.S.C. § 11411.

¹² U.S. Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, p. 9.

¹³ Subsequently, the pilot project proposal was offered in committee as an amendment to H.R. 5787, but the amendment was not adopted. U.S. Congress, House Committee on Oversight and Government Reform, *Federal Real Property Disposal Enhancement Act of 2008*, H.Rept. 110-651 to accompany H.R. 5787 (Washington: GPO, May 15, 2008), p. 7. Hereafter cited as H.Rept.

(continued...)

On June 20, 2007, companion bill S. 1667 was introduced by Senators Thomas Carper and Tom Coburn. The bill would require the director of the Office of Management and Budget to establish a five-year pilot program to speed the disposal of surplus or underutilized federal real properties. The bill would authorize the OMB Director to select federal properties to participate in the program. It would authorize the expedited sale of those properties for cash at not less than the fair market value. It would prohibit disposal by “exchange, trade, transfer, acquisition of like-kind property, or other non-cash transaction.” Federal properties selected for the expedited disposal pilot program would not be subject to GSA requirements and procedures for public benefits conveyance. An agency that sold a surplus property through the expedited disposal process would receive reimbursement for any administrative costs incurred through the sale of the property. In addition, S. 1667 would authorize that 20% of the balance of any proceeds received by the disposal of a surplus property would be deposited into that agency’s account. The remaining 80% of the proceeds would be deposited into the U.S. Treasury as miscellaneous receipts. On June 20, 2007, the legislation was referred to the Senate Committee on Homeland Security and Governmental Affairs. On November 14, 2007, the committee approved by voice vote an amendment that would include a provision to allow for no-cost conveyance of surplus federal property to homeless assistance groups. S. 1667, as amended, was ordered to be reported favorably by the committee on November 14, 2007. The bill was reported¹⁴ and placed on the Senate Legislative Calendar under General Orders (Calendar No. 631) on April 7, 2008.

H.R. 5787. According to GAO, agencies are limited in their ability to bear the costs of preparing properties to be declared excess and surplus and subsequently disposed of.¹⁵ One reason for this is that, under current law, net proceeds of the sale of surplus federal real property are placed in a fund in the Treasury and are not available to the selling agency. On April 14, 2008, however, Representatives Moore and Duncan introduced H.R. 5787, the Federal Real Property Disposal Act, to allow federal agencies to retain the net proceeds of the sale of their surplus real and related personal property. This would help them to cover the costs of preparing the property for disposal. The bill would also authorize GSA “to assist agencies in preparing properties to be reported excess” and further authorize GSA to dispose of property “that has reverted back to the federal government from previous sales.”¹⁶ On May 15, 2008, the House Committee on Oversight and Government Reform favorably reported H.R. 5787, as amended.¹⁷ On May 22, 2008, the House agreed to the bill and sent it to the Senate.

¹³ (...continued)

110-651. In his additional views, the ranking member noted that in 2005 the committee had approved the proposed pilot project by unanimous consent; and he signaled his intent to seek the inclusion of the provision “as the legislation moves forward.” *Ibid.*, p. 17.

¹⁴ S.Rept. 110-279.

¹⁵ U.S. Government Accountability Office, Statement of Mark L. Goldstein, Director, Physical Infrastructure, “Federal Real Property: An Update on High-Risk Issues,” GAO-07-895T, May 24, 2007, pp. 19, 20.

¹⁶ H.Rept. 110-651, p. 5.

¹⁷ H.Rept. 110-651.