

GUIDANCE - STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

I. BACKGROUND

This guidance is intended to assist Major Commands (MACOMs) and Installations in understanding the McKinney Homeless Assistance Act to comply with its' provisions:

- Congress enacted the Stewart B. McKinney Homeless Assistance Act on 22 July 1987. The intent of the McKinney Act is "to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless."
- Numerous organizations representing the homeless brought suit against five federal agencies, including the Department of Defense. The suit claimed that the federal agencies had failed to comply with the Act and sought a preliminary injunction to prohibit the agencies from selling or other-wise disposing of any property eligible for use under Section 501 of the Act until its' provisions were properly implemented. Section 501 of the Act establishes a process by which surplus Federal property is to be made available to assist the homeless.
- The District Court upheld that the injunction was appropriate; this injunction remains in effect today. As a result of the injunction, Title V of the McKinney Act was amended. Public Law 101-645, 104 Statute 4673 (effective February, 1991) provided that; "Suitable Federal properties categorized as underutilized, unutilized, excess, or surplus may be made available to States, units of local government, and non-profit organizations for use as facilities to assist the homeless in accordance with several guidelines and processes."

II. ORGANIZATIONS' RESPONSIBILITIES

Assisting the homeless under Title V is divided among four agencies:

1. U.S. Army Center for Public Works (USACPW) - responsible for collecting Title V checklists of unutilized, underutilized, and excess property and reporting it to Department of Housing and Urban Development (HUD). Accountable for informing the install-ations of homeless

providers interested in property published in the Federal Register screened by HUD. Accountable to Health and Human Services (HHS), for property published in the Federal Register that is no longer available for homeless providers. Also, responsible for quality assurance to the installations, HHS, and HUD. Finally, responsible for submitting change of status of real property to HUD.

2. General Services Administration (GSA) - responsible for collecting information for excess property and reporting it to HUD to assist the homeless.

3. Department of Housing and Urban Development (HUD) - responsible for collecting and advertising information from federal landholding agencies regarding federal real property that is excess or surplus or is described as unutilized or underutilized in property surveys which are performed annually by landholding agencies. HUD is also responsible for developing suitability criteria to determine which if the properties are suitable for use as facilities to assist the homeless. Only HUD has the authority to determine whether a property is suitable or unsuitable.

4. Health and Human Services (HHS) - responsible for accepting and evaluating applications from States, local government agencies, or private non-profit organizations which provide services to the homeless for use of unutilized, underutilized, excess and surplus properties. In the case of unutilized or underutilized property, HHS will process applications for the use of the property, but the individual landholding agency will enter into the lease or permit agreement with the successful applicant.

5. Major Army Commands (MACOMs) - responsible for authorizing and collecting a copy of checklists submitted for disposal by installations. At their discretion, copies may be received from the installations and then forwarded to CPW

6. Installations - responsible for compiling checklist and submitting to USACPW (thru MACOM if directed) for processing of real property (land/facilities) that are owned and are under-utilized, unutilized, or excess.

III. GUIDANCE

The McKinney Homeless Assistance Act is one of several administrative processes associated with facility disposal and outgranting. To ensure that the McKinney Homeless screening process does not delay disposals, installations should submit checklists when the facilities are identified. It is required that all landholding agencies report the planned disposition property status of facilities and land within a one-year time period of the disposal (Congressional as well local projects).

The McKinney Homeless Assistance Act requires both annual and quarterly reports of underutilized, unutilized, or excess real property set forth in 41 CFR 101-47.801. Installations should continue to survey all real property assets to determine those that are underutilized, unutilized, excess, or surplus. If these assets have not been previously reported to HUD for screening, you must report them. You need not report/send the same checklists in each quarter. The checklist only needs to be reported once. If there has been and change on previously reported properties, submit a new checklist or a copy of the old checklist with the new information marked in red (or otherwise readily identifiable). HUD will make a new suitability determination based on the revised information.

Three copies of the completed Title V checklist should accompany each reported building/land area. One copy should go to your MACOM and two copies should go to the USACPW, unless otherwise directed by MACOM. You may consolidate similar assets into one questionnaire, but ensure each facility is identified separately. If multiple facilities are submitted on the same checklist, and there is not enough room on the front page, you may attach a list of the facilities at the end of the checklist. Checklists are continuously received all year long, and must be received on or before the suspense date, or they will be held until the following quarter submission.

The dates for the quarterly updates are 1 January, 1 April, 1 July, and 1 October. MACOMs and Installations must track all properties that HUD has determined to be suitable or unsuitable, and report any changes in status to USACPW within 15 days following the first day of each quarter. The quarterly updates allow the installations to add or withdraw property from the McKinney Homeless Assistance Act database. Negative reports are required and may be provided by e-mail, fax, or memo. Negative reports are considered to be one of

the following: No change in status, no new properties to report, no disposal, leases, or transfers.

If an agency wants to lease the property, the property must be reported through the McKinney Act before the lease is executed. The checklist submitted by the installation cannot state that the property is unavailable to homeless providers makes this property unavailable to everyone else also. If property is to be used for any other use than a federal use, it must be processed through the McKinney Homeless Assistance Act.

Base Realignment and Closure (BRAC) - Installations being realigned must continue to report property that is underutilized, unutilized, or excess. If property is to be used for any other use other than a federal use, it has to go through the McKinney Homeless Assistance Act.

IV. PROCESSING

If you request a checklist to be removed from the McKinney Homeless Assistance Act database, it must accompany one of the reasons above. Properties that have been removed from the database, and are being resubmitted, are subject to the same reporting requirements as newly reported facilities, even if the properties were previously screened.

HUD determines suitability of all reported underutilized, unutilized, and excess real property, then notifies USACPW within 30 days of collecting the information. Only HUD has the authority to make suitability determinations. The exemption of dilapidated buildings are no longer valid. Installations determine the availability of the property.

If properties are determined as unsuitable, you are prohibited by Title V from taking any disposal action for a period of 20 days from date of publication in the Federal Register. The holding period starts the date of publication in the Federal Register. During this 20-day holding period, homeless providers may appeal HUD's determination for a reversal decision. Properties advertised in the Federal Register may not in any way be disfigured, destroyed, or demolished until after the time period determined by Public Law 101-645.

Once HUD screened all properties, USACPW has 45 days to verify if the property screened as suitable is available or unavailable for the homeless provider use. If the property is unavailable, the landholding agency must submit justification to USACPW.

HUD published the property in the Federal Register within 15 days of receiving verification of suitability from USACPW.

For properties determined as suitable and available, MACOMs/Installations are prohibited by the McKinney Homeless Assistance Act from taking any disposal action for a period of 60 days from date of publication in the Federal Register. During this holding period, eligible entities may notify HHS of their interest to apply for use of the property. Properties advertised in the Federal Register may not in any way be disfigured, destroyed, or demolished until after the time period determined by Public Law 101-645.

Any homeless provider that expresses a written interest in a particular property/ies listed in the Federal Register, will be mailed an application from HHS. HHS will collect and approve/disapprove the applications/s. The landholding agency and their MACOM will then receive a copy of the homeless provider's intent to apply for a specific property/ies from USACPW during the 60-day advertisement period. The landholding agency is then prohibited by McKinney Homeless Assistance Act from taking any disposal action for a period of 90 days from the date of the written request. The time line starts when HHS receives the expression of intent.

Once the application is returned, HHS will have 25 days to approve or disapprove the application/s. The homeless provider can withdraw their interest in the property at any time.

If the applicant withdraws their interest in the property and the property has met the 60-day time period, the landholding agency may dispose of the property.

If the applicant's application/s is/are not approved, the landholding agency may proceed with disposal procedures in accordance with applicable Federal law.

If a provider is approved by HHS, the landholder (Army) will grant a lease or assign to HHS to convey title under authority 10 USC 2667 and 10 USC 2546 (the McKinney Homeless Assistance Act). The facilities are made available at not cost to the lessee. Before a landholder may lease real property to any entity (private organization) for non-Army purposes they must first go through McKinney Homeless Assistance Act.

Army property will be offered for non-Army purposes in the order of preference below:

- Other DoD agencies
- Other federal agencies
- McKinney Act applicants
- State and local government agencies
- private organizations

We encourage you to maintain complete files to justify your actions in the event of scrutiny by others (i.e., higher headquarters, the courts, or Congress).

The McKinney Homeless Assistance Act is a statutory requirement. The process within the act is mandated by law. The 30-day HUD review, the 60-day Federal register advertisement, and the 90 days for the homeless provider to complete the application time lines are fixed. The only portion of the process that can be controlled is the submission to HUD.

V. DETERMINATIONS

The determinations rendered by HUD screening are as follows:

1. Suitable/Available - Property screened by HUD to be safe, not possessing and health or harmful risk to anyone of the environment, and available for homeless providers' use.
2. Suitable/Unavailable - Property screened by HUD to be safe, not possessing any health or harmful risk to anyone or the environment, and available for homeless providers' use. (Ex.: property in the process of being demolished, transferred from one government agency to another, transferred to the city or another entity bypassed by Public Law. Also, property that is located in a Secure Area, for National Defense Purposes).

3. Suitable/To Be Excessed - Real Property to be excessed to GSA. Property not needed to support current or future mission requirements. Property screened by HUD to be safe, not possessing and health or harmful risk to anyone or the environment, and not available for homeless providers' use.

4. Unsuitable - Property screened by HUD to be inappropriate to safety, possessing health and harmful risk to the environment and others.

Reasons for Unsuitability - Not Accessible by Road, within an Airport Runway, secured Area, floodway, extensive deterioration, within 2000 feet of Flammable Explosive Material and contaminated.

VI. EXCEPTIONS TO THE MCKINNEY HOMELESS ASSISTANCE ACT

1. Machinery and Equipment, Government-owned, Contractor-operated machinery, equipment, land and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

2. Properties subject to special legislation directing a particular action:

a. As mobilization is an Army mission, facilities that are set aside for mobilization and are vacant are not considered unutilized and underutilized and need not be reported under the McKinney Homeless Assistance Act.

b. Facilities that are set aside for Reserve Training and are vacant awaiting Reserve units are not reportable under the McKinney Homeless Assistance Act.

c. Facilities within a one year time period which stand in the way of Congressionally approved as well as local construction projects.

d. Properties under easement which are to be transferred to local governments.

e. Properties to be conveyed to landholders adjoining military installations where the landholders currently use the property.

f. Intrabranch property transfers where the branch to receive title already uses the property.

g. Properties to be leased to private entities which provide services to the military. (Ex.: Utilities, waste water treatment, solid waste disposal, and sewage disposal.)

h. "Structures/Buildings Damaged Beyond Repair" - These are facilities utilized and underutilized and damaged beyond repair for some unforeseen reason, causing safety and health hazards. The underlying real property is not designated as underutilized or unutilized. (Ex.: Government building bombed in Oklahoma, or facilities destroyed by hurricane.) HUD is the only one that will make a determination on these facilities suitable or un-suitable, not subject to McKinney Homeless Assistance Act. DA is the only one that can authorize the disposal of these facilities.

4. Properties subject to a Court Order, property not subject to survey requirements of Executive Order 12512 (29 April 1985), Mineral right and Air/Space interests, Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended. In addition, property interests subject to revision (i.e. withdrawn land), easements, property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

5. BRAC:

a. Once property is surplus, installations that are being closed are to forward their information to their local districts and Local Redevelopment Authority (LRA).

b. All pre-1995 BRAC Commission installations are exempt from the provisions of Title V of the McKinney Homeless Assistance Act.

c. All 1995 BRAC Commission installations are exempt, that elect to be treated under the new community-based process wherein representatives of the homeless and other community groups participate in local reuse planning.

Installations approved for closure before 25 October 1994, that did not elect to be treated under the Act continue to be

covered by the provisions of Title V of the McKinney Homeless Assistance Act, as amended.

VII. DEFINITION

Lease - An agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100-526; 10 USC 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.