



# Public Property/Public Need

A toolkit for using vacant federal property  
to end homelessness

NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY

# ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is the only national organization dedicated solely to using the power of the law to end and prevent homelessness. We work with federal, state and local policymakers to draft laws that prevent people from losing their homes and to help people out of homelessness. We have been instrumental in enacting numerous federal laws, including the McKinney-Vento Act, the first major federal legislation to address homelessness. The Act includes programs that fund emergency and permanent housing for homeless people; makes vacant government properties available at no cost to non-profits for use as facilities to assist people experiencing homelessness; and protects the education rights of homeless children and youth. We ensure its protections are enforced, including through litigation.

We aggressively fight laws criminalizing homelessness and promote measures protecting the civil rights of people experiencing homelessness. We also advocate for proactive measures to ensure that people experiencing homelessness have access to permanent housing, living wage jobs, and public benefits.

For more information about our organization, access to publications, and to contribute to our work, please visit our website at [www.nlchp.org](http://www.nlchp.org).

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# EXECUTIVE SUMMARY

## Learn How to Apply for Free Federal Property to Serve Homeless People

This toolkit by the National Law Center on Homelessness & Poverty will help public and private non-profit service providers **obtain unused federal land and real property** to serve and house homeless people. Under Title V of the McKinney-Vento Homeless Assistance Act (Title V), local governments, state agencies, and non-profit groups that serve homeless people have a right of first refusal to certain property that is no longer needed by the federal government. The federal government will convey these properties by deed<sup>1</sup> or lease to successful applicants **for free**.

This toolkit provides an overview of the Title V program, and answers many commonly asked questions about how to identify and successfully apply for available properties.

## Take Advantage of an Underused Federal Program to Help Meet Your Program Goals

To date, organizations serving homeless people in over 30 states have obtained approximately 500 buildings and nearly 900 acres of land under Title V to provide a wide array of services, including emergency shelter, housing, medical care, job training, food, and other services to over 2 million people each year.<sup>2</sup> These numbers are impressive, yet they do not reflect the program's full potential, as **thousands of properties are made available for transfer each year**.

The Law Center worked with a bipartisan coalition in Congress to improve the Title V program in 2016, which resulted in several improvements to the federal law under the Federal Assets Sale and Transfer Act of 2016 (FAST Act.) The FAST Act reforms how the federal government disposes of its property, allowing for increased transparency into the federal government's real property holdings. It also clarified that federal property transferred under the Title V program may be used for permanent housing with or without supportive services.

The Law Center designed this toolkit to help organizations and local governments take advantage of this vastly underused federal program. In addition to expanding aid directly to homeless people, properties available under the Title V program can be used to provide administrative offices, warehouse space, and other needed uses by government agencies or non-profit organizations assisting homeless people. Our goal is to increase the number of successful applications for unused federal property so that these highly valuable assets can be returned to productive use and help end homelessness in America.



## Contact the Law Center for Technical Assistance

The Law Center has worked with the U.S. Congress, the U.S. Department of Housing and Urban Development (HUD), and other federal agencies to ensure compliance with the federal law governing the Title V program. We have also litigated against the federal government for failure to adequately implement Title V, and secured an injunction against several federal agencies in 1988 to help ensure full compliance with Title V. The injunction has been modified and updated a number of times,<sup>3</sup> most recently in 2013 when the U.S. District Court for the District of Columbia expanded the existing order to impose new requirements on HUD and the U.S. General Services Administration (GSA) to improve program implementation.

We hope to use our vast experience with the Title V program to help you successfully apply for properties, and to keep the federal government accountable to the law. Please contact us with any questions or technical assistance needs related to the program.

<sup>1</sup> Only 501(c)(3) non-profit organizations may obtain property by deed under the Title V Program.

<sup>2</sup> National Law Center on Homelessness & Poverty, *This Land is Your Land: How Surplus Federal Property Can Prevent and End Homelessness* (Oct. 2013), available at [https://www.nlchp.org/documents/This\\_Land\\_Is\\_Your\\_Land](https://www.nlchp.org/documents/This_Land_Is_Your_Land) [hereinafter "This Land is Your Land"].

<sup>3</sup> See Appendix D for copy of injunction and relevant court orders.

# OVERVIEW OF THE TITLE V PROCESS



Title V of the McKinney-Vento Homeless Assistance Act of 1987 (Title V) grants non-profit groups, state agencies, and local governments a right of first refusal to land and real property no longer needed by the federal government. This largely untapped resource provides service providers with potential access to valuable assets that may be used to provide emergency shelter, permanent housing, and services to homeless people – at no charge.

The federal government is the largest single owner of real estate in the nation. Every year, landholding federal agencies determine that properties—such as warehouses, office buildings, and vacant land—are no longer needed.<sup>4</sup> The U.S. Department of Housing and Urban Development (HUD) screens these unneeded federal properties to determine their suitability for homeless use, and all such suitable properties are published online<sup>5</sup> on a weekly basis. Properties that have been screened and advertised will be listed under “Suitability Determination Listings” by date. Before these properties may be sold, non-profit groups, state agencies, and local governments have the right to apply to the U.S. Department of Health and Human Services (HHS) to obtain the properties to assist persons experiencing homelessness.

The federal law governing the Title V program was recently improved pursuant to the FAST Act of 2016.<sup>6</sup> The FAST Act improves transparency into the federal government’s real property holdings, and streamlines the Title V application process. Under the amended Title V law, interested homeless service organizations have thirty days after publication of an available property to submit a notice of interest in the property to HHS. Interested applicants then have seventy-five days after receipt of an application packet from HHS to complete an initial application. The initial application requires that organizations submit detailed and comprehensive documentation of their plans for the properties, including proof of appropriate expertise to execute their proposed programs. If HHS approves the initial application, applicants have an additional forty-five days to provide a final application that sets forth a reasonable plan to finance the approved program. If the final application is approved by HHS, then the federal government will execute a deed or lease conveying the property at no cost to the homeless service provider.

Homeless service providers, community development organizations, and local government agencies have used Title V properties in a variety of ways to meet the needs of people experiencing homelessness in their communities. To date, approximately 500 buildings on nearly 900 acres of land in thirty states and the District of Columbia have been transferred to nonprofit organizations and local governments under Title V. Federal surplus property is used to create emergency shelter, transitional housing for domestic violence survivors, permanent supportive housing for mentally ill veterans, as well as office and warehouse space.

4 Military base property is governed by a separate process, as discussed in another Law Center toolkit: “Utilizing the Base Closure Community Redevelopment and Homeless Assistance Act” available at <https://www.nlchp.org/documents/BRACtoolkit>.

5 See <https://www.hudexchange.info/programs/title-v/suitability-listing/>.

6 Public Law No: 114-287 (12/16/2016).

# QUICK GUIDE TO THE TITLE V PROCESS

## **STEP ONE: Screening to Assess Excess Properties**

Federal law requires landholding agencies to identify their unutilized, underutilized, excess, and surplus real estate holdings to HUD on a quarterly basis, with a comprehensive canvas in the first and third quarters.

## **STEP TWO: HUD Determination of Suitability**

Within 30 days of receiving this information, HUD screens the properties to determine whether they are suitable to assist homeless people.

## **STEP THREE: Determination of Availability**

For unutilized or underutilized property, the landholding agency has 45 days after receipt of HUD's determination of suitability to submit to HUD a statement of intent to declare either the property excess to its ongoing needs, an intent to make the property available for use to assist the homeless, or the reasons (other than the six statutory suitability criteria) why it cannot be declared excess or available for use to assist the homeless. For excess property previously reported to GSA, the landholding agency has 45 days to state either that the property will be determined "surplus" because there is no compelling need for the property by any federal agency or that the property is not presently available for use to assist the homeless because there is a further and compelling federal need for the property (with a full explanation of the need).

## **STEP FOUR: Publication of Suitable and Available Properties**

After the availability determination period, HUD publishes an online<sup>7</sup> listing of all properties that HUD reviewed for suitability and that landholding agencies have assessed for availability. You can find the listings by date under "Suitability Determination Listings." The notices identify the properties under their relevant headings, such as "Suitable and Available" for homeless use, or "Unsuitable."

## **STEP FIVE: Property is Held for Eligible Service Providers to Express Interest**

For thirty days after a property is published online, properties listed as suitable and available are held by the federal government so that eligible homeless service providers may express interest in receiving the property. Interested providers must submit a "notice of interest" to HHS.

## **STEP SIX: Applying for the Property**

After receipt of a notice of interest, HHS provides an application to the homeless service provider. The homeless services organization has seventy-five days to complete and submit an initial application for the building(s) and/or land. The initial application requires the organization to submit detailed and comprehensive planning documentation.

## **STEP SEVEN: HHS Makes a Determination on the Initial Application**

Under the statute, HHS must review and make a determination on the initial application within 10 days of receipt. If HHS deems the application incomplete, the agency may request additional information, which may prolong the process. During this period, the property may not be otherwise transferred or sold.

## **STEP EIGHT: Submitting the Final Application**

If HHS approves an initial application, the applicant has forty-five days to provide a final application that sets forth a reasonable plan to finance the approved program.

## **STEP NINE: HHS Makes a Final Determination on the Application**

Once the final application has been submitted, HHS has fifteen days to make a final determination.

## **STEP TEN: Property is Transferred if the Final Application is Approved**

If HHS approves the final application, property should be made promptly available by permit, lease, or by deed at the applicant's discretion.

If the homeless service provider attempts to sell the property or use it for purposes other than those stated in its application, the property reverts back to the federal government.

<sup>7</sup> See <https://www.hudexchange.info/programs/title-v/suitability-listing>.



# Q & A: GETTING STARTED

This section includes common questions about the Title V property screening process, and how to search for available properties.

## WHICH FEDERAL PROPERTIES ARE REPORTED TO HUD FOR POSSIBLE USE BY HOMELESS SERVICE PROVIDERS?

Title V requires every landholding federal agency to provide information to HUD on a quarterly basis on its unutilized, underutilized, excess, and surplus property.

## HOW ARE PROPERTIES DETERMINED TO BE UNDERUTILIZED, UNUTILIZED, EXCESS, OR SURPLUS?

The terms unutilized, underutilized, excess, and surplus property are defined under the Federal Property and Administrative Services Act of 1949, as well as the HUD and HHS Title V regulations.

“Excess property” is property that is not required to meet the landholding agency’s needs or responsibilities.

“Surplus property” is property that is not required to meet any federal agency’s needs or responsibilities.

“Underutilized property” is an entire property or portion of it, with or without improvements, that is either used irregularly or intermittently by the landholding agency for its current program purposes or used for current program purposes that can be satisfied with only a portion of the property.

“Unutilized property” is an entire property or portion of it, with or without improvements, that is not occupied for current program purposes of the landholding agency or is occupied in caretaker status only.

## WHO MAY APPLY FOR PROPERTY?

State and local governments and non-profit organizations are eligible applicants. Only non-profits with 501(c)(3) tax-exempt status are eligible to receive deeds to property under the Title V program.

Multiple organization are permitted to partner together in an application for a single property. Also, a single applicant may apply for more than one available property, provided the application criteria are met for each property.

The applicant should have expertise in operating the program proposed in the application. For example, an application to provide medical services to homeless people may be denied if no doctors, nurses, or other licensed medical practitioners are on the staff, Board, or serve as volunteers.

## WHAT PROGRAMS MAY BE PROPOSED IN AN APPLICATION FOR PROPERTY?

The program must serve and be intended for homeless persons. Applicants may serve a small number of persons who

are formerly homeless or at-risk of homelessness, as long as the proposed program primarily serves persons experiencing homelessness.

Eligible uses for Title V-acquired property include emergency shelters, transitional housing, healthcare, child care, job training, food distribution, mental health services, substance abuse treatment services, and permanent housing with or without supportive services.<sup>8</sup>

## CAN TITLE V PROPERTIES BE USED FOR PERMANENT HOUSING?

Yes, the law governing the Title V program was amended in 2016 to clarify that permanent housing with or without supportive services is an eligible use of surplus property.

## HOW DO I FIND TITLE V PROPERTIES?

Each Friday, HUD publishes a list of properties available for application on HUD Exchange, available at <https://www.hudexchange.info/programs/title-v/suitability-listing/>. The notices, listed under “Suitability Determination Listings”, are organized by advertisement date. By clicking on the desired date, you will find a list of properties by state location, identified as either: (1) “Suitable and Available” to assist homeless people homeless use, (2) “Suitable and Unavailable”, (3) “Suitable and to be Declared Excess”, and (4) “Unsuitable.” Properties listed as suitable and available are held for a period of 30 days after the listing date for potential application by eligible service providers.

## WHY IS A PROPERTY LISTED AS UNAVAILABLE?

Once HUD determines that a screened property is suitable to assist homeless people, the relevant federal agency makes its availability determination.

For unutilized or underutilized property, the landholding agency must state either an intent to declare the property excess, an intent to make the property available for use to assist the homeless, or the reasons why it cannot be declared excess or available for use to assist people experiencing homelessness.

For excess property previously reported to GSA, the landholding agency must state the property will be determined “surplus” because there is no compelling need for the property by any federal agency or state or that the property is not presently available for use to assist the homeless because there is a further and compelling federal need for the property (with a full explanation of the need).

## CAN I CHALLENGE A DETERMINATION OF UNAVAILABILITY?

Federal agencies have discretion under the law to determine whether there is an ongoing need for properties screened under

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<sup>8</sup> [https://www.nlchp.org/documents/This\\_Land\\_Is\\_Your\\_Land/](https://www.nlchp.org/documents/This_Land_Is_Your_Land/). See This Land is Your Land, supra note 2.

the Title V program, however, the relevant landholding agency must provide reasons sufficient to justify this determination. If a homeless service provider desires to use federal property that it believes should be available for such use under Title V, the provider may challenge these agency determinations pursuant to the Administrative Procedure Act.<sup>9</sup>

### WHAT DOES “OFF-SITE USE” MEAN?

Property that is listed as available for “off-site use only” means that any recipient of such property must remove the building(s) to their own site, at their own expense.

### WHY IS A PROPERTY LISTED AS UNSUITABLE?

Although the Title V statute does not define “suitable for use to assist the homeless,” HUD regulation states that a property is unsuitable if it falls under one of the following six categories:

1. **National security:** Properties to which the public is denied access in the interest of national security, including properties where a security clearance is necessary for entrance, unless alternative access can be provided without compromising national security.
2. **Flammable or explosive materials:** A property within 2,000 feet of an industrial, commercial, or federal facility handling flammable or explosive material (excluding underground storage, gasoline stations, and tank trucks that do not evidence a threat to personal safety as discussed in (5) below and above-ground containers with a capacity of 100 gallons or less or larger containers that provide the heating or power source for the property that meet local safety, operation, and permitting standards).
3. **Runways and Military airfield clear zones:** Properties within airport or military airfield runway clear zones.
4. **Floodway:** Properties within a floodway of a 100-year floodplain, unless the floodway has been contained or corrected, or only a small section of the property that will not affect the use of the remainder is in the floodway.
5. **Documented Deficiencies:** Properties containing documented and extensive conditions that represent a clear threat to personal physical safety. These could include: contamination, structural damage, extensive deterioration, asbestos, PCBs, radon, flooding, sinkholes, or earth slides.
6. **Inaccessible:** Properties to which there is no road or right of entry.

### CAN I CHALLENGE A DETERMINATION OF UNSUITABILITY?

Yes. To appeal HUD’s determination of unsuitability, a “representatives of the homeless” must contact HUD either by calling a toll-free number (1-800-927-7588) or in writing within 20

days of its publication online. Written requests must be received no later than 20 days after notice of unsuitability is published online. The request for review must specify the grounds on which it is based, e.g., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination, such as that the property is in a floodplain but not in a floodway.

Upon receiving the request for review, HUD will notify the landholding agency of the request, ask the agency for all pertinent information on the property to review the determination, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. HUD must act on the request for review within 30 days of receiving the requested information from the landholding agency. It will then notify in writing both the potential applicant and the landholding agency of its decision.

### HOW CAN I GET MORE INFORMATION ABOUT THE LISTED PROPERTIES?

Homeless service providers should contact the landholding agency for more information about particular properties identified in the notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address). The notices’ “Supplementary Information” section provides contact information for the relevant agencies. You may also contact HUD by calling the toll-free Title V information hotline at 1-800-927-7588.

### WHO SHOULD I CONTACT WITH GENERAL QUESTIONS ABOUT THE TITLE V PROGRAM?

You can email HUD at [title5@hud.gov](mailto:title5@hud.gov) with questions about the Title V process and information on how to subscribe to the Title V email group for advance notice of property listings. You may also contact the office by phone at 202-402-3970.

You may also contact Tristia Bauman, Senior Attorney at the Law Center, at [tbauman@nlchp.org](mailto:tbauman@nlchp.org).

<sup>9</sup> 5 U.S.C. §§ 551, 559, 701-706.

# Q&A: KEY CONSIDERATIONS BEFORE APPLYING FOR PROPERTY UNDER TITLE V

This section includes important issues that potential applicants for property under Title V should consider when determining whether to pursue a property.

## **IS THE FEDERAL GOVERNMENT REQUIRED TO REHABILITATE PROPERTIES WITH DOCUMENTED DEFICIENCIES BEFORE TRANSFER?**

No. While there are federal laws requiring the federal government to convey property that meets certain environmental standards, all properties conveyed through the Title V program are conveyed, “as is.” This means that any lead paint or mold remediation, remodel and construction costs, and other expenses necessary for readying the property for use are the responsibility of the applicant.

## **DOES IT COST ANYTHING TO APPLY FOR PROPERTY UNDER TITLE V?**

There are no direct costs associated with submitting an application, and all properties approved for transfer are done so at no charge. There may be costs, however, associated with gathering the information necessary to complete the application, such as expenses related to the performance of an environmental survey.

In addition, properties are made available on an “as is” basis. Therefore, applicants should secure separate funding for administrative or operating costs and for any construction, development, or repair costs. Applicants are also required to pay all external administrative costs, which will include taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction, and service charges, if any, made by state agencies for Federal Property Assistance under the terms of a cooperative agreement with HHS.

## **DO LOCAL ZONING LAWS APPLY TO PROPERTIES TRANSFERRED UNDER TITLE V?**

Local zoning laws and regulations apply to property that will be transferred by deed. Thus, if the proposed use is not permitted at the property location under local law, the applicant may need to obtain an exemption before the program may become operational.

Local zoning laws do not apply to property acquired by lease.

## **DO LOCAL BUILDING CODES APPLY TO PROPERTIES TRANSFERRED UNDER TITLE V?**

Yes. Properties must comply with local building codes.

## **HOW CAN I BEST PREPARE TO SUBMIT AN APPLICATION FOR PROPERTY UNDER TITLE V?**

You may access the Application Instruction Booklet and checklist that HHS provides at <https://qa.psc.gov/docs/default-source/>

[real-property-management/fed-prop-titlev.pdf?sfvrsn=2](https://qa.psc.gov/docs/default-source/real-property-management/fed-prop-titlev.pdf?sfvrsn=2). Eligible service providers interested in pursuing property under Title V can get a head start on the application process by gathering required information, such as documentation demonstrating the local need for the proposed programming, before the 75 day initial application period begins. Indeed, potential applicants would be well served to wait to submit an expression of interest toward the end of the initial 30 day holding period, to maximize the time available to them prior to formally beginning the application process.

## **HOW DO I ADDRESS LOCAL NIMBY (NOT IN MY BACKYARD) CONCERNS about using the property To SERVE OR HOUSE homeless PEOPLE?**

Applicants who wish to secure property by deed under Title V may find that their proposals are met with local pressure commonly referred to as NIMBYism (Not In My Backyard.) Applicants seeking to avoid NIMBY issues should engage with the community and public officials as soon as possible in the process. Providers have reported significant success dampening community concerns when they include city officials and neighbors at all planning stages and approach the application process as a collaborative effort. Collaborations also increase the chances of demonstrating to HHS that the applicant has the resources to operate the program successfully.

The anti-NIMBY campaign should begin with an objective consideration of potential NIMBY concerns. By putting yourselves in the shoes of potential opponents, you will best be able to understand and address their concerns. For example, it may be helpful to consider all of the potential effects, both real and imagined, of locating your program on the property so that you are prepared to respond to these concerns.

Efforts to educate the community about your program proposal, your proposal’s compatibility with overall community development goals, and the benefits your program offers the community are also key. You can develop fact-sheets, talking points, and engage local media with a clear, concise explanation of how your program will benefit the community as a whole. Also, it may be helpful to refer to studies or examples showing that any perceived potential for community harm, such as an increase in crime or litter, are not likely to occur and, in fact, may be reduced by the provision of your services.

A broad-based coalition will appeal to diverse elements of the community and instill more confidence in the feasibility of implementing the program safely and successfully. You may wish to designate specific community liaisons to establish relationships with interested parties and lead anti-NIMBY efforts, such as community meetings and forums. Invite community members, business leaders, and others to visit the organization’s existing

programs, meet their directors and staff, and meet their clients.

In addition, you may wish to partner with legal services, law school professors or legal clinics, or pro bono law firms to assist in addressing legal issues such as zoning requirements.

Finally, applicants should consider leasing the property. Programs that lease property from the federal government are not subject to local zoning laws, and this can be helpful in avoiding problems associated with local opposition to the proposed programming. Transfer of the property via deed or lease is at the discretion of the applicant under recent changes to the Title V law. For a discussion of the respective advantages of leasing or owning property, please see Q&A: Conveying Property Under Title V.

**WHO CAN I CONTACT FOR MORE INFORMATION ABOUT THE TITLE V APPLICATION PROCESS?**

You may contact Theresa Ritta at HHS via email at [Theresa.Ritta@psc.hhs.gov](mailto:Theresa.Ritta@psc.hhs.gov), or by phone at 301-443-6672.

You may also contact Tristia Bauman, Senior Attorney at the Law Center, via email at [tbauman@nlchp.org](mailto:tbauman@nlchp.org).



# Q&A: APPLYING FOR PROPERTY UNDER TITLE V

This section includes common questions about the application process.

## HOW & WHEN DO I BEGIN THE APPLICATION PROCESS?

Non-profit organizations and state and local government agencies that provide or propose to provide services to the homeless may send a written “expression of interest” to HHS within 30 days after the property has been listed as suitable and available online. HHS then sends the interested party an application, and the property may not be made available for any other purpose until the date HHS or the landholding agency has completed action on the application.

If the expression of interest is submitted after this 30-day time period has elapsed, the interested party may still be able to obtain the property if it remains available. If surplus property remains available, Title V states that use to assist the homeless must be given priority of consideration over other competing disposal opportunities, except if HHS or GSA determine that a competing request for the property under § 550 is so meritorious and compelling as to outweigh the needs of the homeless.

## WHAT IS AN EXPRESSION OF INTEREST?

The expression of interest is a brief letter or email sent to HHS. It should identify the specific property, briefly describe the proposed use, include the name of the organization, indicate whether it is a public body or a private non-profit organization, state the organization’s intent to apply formally for the property and request an application packet. Please refer to Appendix B for a model expression of interest.

## WHAT HAPPENS AFTER I SUBMIT AN EXPRESSION OF INTEREST TO HHS?

HHS will send an application packet in response to the expression of interest with a deadline of 75 days for the initial application. HHS may grant reasonable extensions of this period if the landholding agency agrees with the extension.

## AM I OBLIGATED TO COMPLETE AN APPLICATION AFTER I EXPRESS INTEREST IN A PROPERTY?

No, an interested party is under no obligation to submit an application after expressing interest in property. Additionally, the party may choose to withdraw its application at its discretion any time prior to HHS’ final determination of approval or disapproval.

## WHAT INFORMATION DOES THE APPLICATION REQUIRE?

The application must include the following:

**Description of the Applicant Organization:** The description of the applicant organization should include documentation that the organization is a “representative of the homeless,” which is defined

as, “a State or local government agency, or private nonprofit organization, which provides services to the homeless.” The description must also state that the applicant is allowed to hold real property, and in the case of those private non-profit organizations applying for deeds, documentation of 501(c)(3) tax-exempt status.

**Description of the property desired:** A description of the property should include a description of proposed modifications to the property, and whether such proposed modifications conform to local use restrictions. Applicants should also describe any required utilities and how arrangements will be made for securing all needed utility services. Applicants may generally acquire related personal property included with the available real property if the need and use are specifically included and justified in the application. Applicants should also state that the property is suitable for the proposed use and/or provide plans for its conversion, including a rough draft of the floor plan and a plat (an official drawn to scale map) of the property showing any planned improvements, and identify if there are any easements, rights of use, zoning regulations, or other encumbrances that would impede the homeless assistance program.

**Description of the proposed program:** The application should include a detailed outline of the proposed program, the population it will serve and how the program will address the needs of the homeless population to be assisted. Specific information to be submitted includes:

- The estimated number of clients to be served in a given year;
- A list of other facilities in the community that currently offer the same type of service, including the number of clients and/or beds, and information to support the need for additional services in the community;
- Any surveys, reports, or other documentation to support the need for the proposed services, such as a municipality’s ten-year plan to end homelessness, local reports or surveys on the number of persons without shelter, and continuum of care (CoC) plans;<sup>10</sup>
- A description of modifications that will be made to the property before the program becomes operational, including the time for completion and full utilization, and a rough floor plan;
- A description of the length of time any current programs have been operating, the proposed level of staffing and

<sup>10</sup> Every community that receives McKinney-Vento Homeless Assistance Act funds from HUD must have a CoC system to assess and address homeless service needs. Generally, the CoC collects and analyzes data on homelessness in the community, conducts needs assessments, and determines the allocation of federal funds in the local community. To find your local CoC, visit: <http://www.hud.gov/offices/cpd/homeless/programs/cont/coc/>.

qualifications of all existing and anticipated future staff, and the relevant past experience and demonstrated success of the applicant in successfully providing homeless services;

- Identification of any real estate owned or leased by the applicant organization, including a statement that such property is not suitable or not sufficient for the proposed program.

**Ability to Finance and Operate the Proposed Program:** The application should describe the applicant’s ability to finance and operate the proposed program, describing all costs and sources of funding, including the cost of maintaining the property. The application requires details, such as a capital outlay budget and separate identification of funding sources for operations. A reasonable plan to finance the proposed program can be deferred to the final application, due forty-five days after an initial application is approved.

**Compliance with Non-discrimination Requirements:** The application should include a certification that the applicant complies with various non-discrimination requirements: Executive Order 11063 and the Fair Housing Act, Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973 and their implementing regulations. The applicant must also state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property and will maintain the required records to demonstrate compliance with federal laws.

**Insurance:** The application should include a certification that the applicant will insure the property against loss, damage or destruction.

**Historic Preservation:** The application should include information relevant to historic preservation concerns, where applicable.

**Environmental Information:** The application should include sufficient environmental information to allow HHS to analyze the environmental impact of the proposed project on the surrounding area. The application requires the applicant to complete a ten-page environmental questionnaire. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

**Local Government Notification:** The applicant must inform the unit of local government responsible for providing sewer, water, police, and fire services in connection with the proposed program and provide copies of the notices.

**Zoning and Local Use Restrictions:** The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Those applicants applying to lease the property (instead of obtaining a deed for the property) are not

required to comply with local zoning requirements.<sup>11</sup> Applicants for either a lease or a deed must comply with local use requirements and building codes. The application packet requires the applicant to “[i]ndicate the zoning restrictions, if any, that are applicable to the subject property, and assure that the proposed program will conform to such restrictions.”

### HOW DO I GATHER THE REQUIRED INFORMATION?

The landholding agency likely possesses much of the information required in the application, such as the description of the property, information about historic preservation, environmental information, and zoning and local use restrictions. Homeless service providers interested in obtaining property through the Title V process should contact the landholding agency as soon as possible to obtain the information needed to complete the application. In addition, applicants may contact the landholding agency to arrange to visit the site. If a request for information is not applicable to the proposed program, HHS directs the applicant to include in the application the heading and state “Not Applicable.”

Applicants should err on the side of providing too much information instead of omitting information or not providing enough detail. Applications that HHS determines are incomplete will either result in a disapproval of the application or a request for additional information.

### WHAT ARE THE CRITERIA FOR APPLICATION REVIEW?

HHS will evaluate every application on the basis of five criteria, which are listed in descending order of priority, except that criteria 4 and 5 are of equal importance.

1. **Services Offered:** The extent and range of proposed services such as meals, shelter, job training, and counseling.
2. **Need:** The demand for the program and the extent to which the available property will be fully utilized.
3. **Implementation Time:** The amount of time necessary for the proposed program to become operational.
4. **Experience:** Demonstrated prior success in operating similar programs and recommendations attesting to that fact by local, state, and federal authorities
5. **Financial Ability:** The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility

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<sup>11</sup> HUD’s regulations preempt state and local zoning laws under the Supremacy Clause of the U.S. Constitution. *See also United States v. Village of New Hempstead*, 832 F. Supp. 76 (S.D.N.Y. 1993).

### HOW DO I PUT TOGETHER A FINANCIAL PLAN?

Carefully analyzing the budget of programs similar to your proposal also can help ensure that your budget includes all the elements. The budget should address any needed improvements or changes to the property, including maintenance during its vacancy. If an applicant seeks to acquire a deed instead of a lease, an applicant may want to budget for the cost of seeking an exception to applicable zoning limits. Likewise, the applicant may want to budget for any unforeseen costs that occur later in the redevelopment process, if noncompliance with land use laws or environmental hazards become an issue.

### CAN I PARTNER WITH OTHER ORGANIZATIONS IN THE APPLICATION?

Yes, and there are advantages to doing so in some circumstances. If you are a new organization with a short financial history, partnering with another organization that has more financial and service history can strengthen the application. In addition, multi-organizational applications for large properties may be best to demonstrate full utilization of the property.

### HOW LONG DOES THE FINAL APPLICATION REVIEW PROCESS TAKE?

Although Title V requires HHS to complete all actions on the final application no later than 15 days after receipt of a completed application, HHS may extend this period by requesting more information. Make sure to consider the effect of delays in planning for the project.

### WHOM CAN I CONTACT FOR TECHNICAL ASSISTANCE WITH MY APPLICATION?

The Law Center can provide technical assistance with applications for property under Title V, and we encourage applicants to reach out to Tristia Bauman, Senior Attorney at the Law Center, at [tbaum@nlchp.org](mailto:tbaum@nlchp.org) for help. In appropriate cases, we may be able to link applicants to additional pro bono legal and other support.



# Q&A: CONVEYING PROPERTY UNDER TITLE V



This section discusses common questions related to the transfer of property following a successful application.

## **WHAT HAPPENS AFTER AN APPLICATION IS APPROVED?**

Once HHS approves an application, it notifies the applicant and requests that the appropriate agency transfer the property. The applicant may request conveyance by either lease or deed.

## **WHAT ARE THE RESPECTIVE ADVANTAGES OF LEASING OR OWNING THE PROPERTY?**

Each arrangement has its own benefits and drawbacks. Programs that lease property from the federal government are not subject to local zoning laws, and this can be helpful in avoiding problems associated with local opposition to the proposed programming. In addition, lessees of Title V properties may be able to avoid certain maintenance, repair, and remediation duties that are the responsibility of leasing agencies under state law.

There are also disadvantages, however, to leasing a property. For example, without adequate legal assistance, providers have fallen victim to poorly drafted leases that allocate responsibility to the provider and limit the use of the property, ability to make improvements or alterations, and the terms of occupancy.

In comparison, owning title to the property leaves the provider with greater control over its development and use, provided that there is compliance with local zoning laws and building codes. Providers who obtain a lease may also find it easier to secure grants, donations, and other funding for the property. The provider, however, is solely liable for all necessary capital improvements, repairs, and remediation.

It is best to consult with a lawyer about the respective pitfalls of a lease or deed in your particular situation, and to retain legal assistance in negotiation and drafting of documents related to the lease or deed transfer. Please note that, whether under lease or deed, the U.S. Government must convey the property without cost to the successful applicant.

## **DO I HAVE ANY ONGOING OBLIGATIONS ONCE THE PROPERTY HAS BEEN TRANSFERRED?**

After acquiring the property, the recipient will be required to submit reports to HHS once a year detailing the type and number of people served and the homeless provider's compliance with the program plan submitted in the application. Properties that do not comply with the ongoing obligations following receipt of the property, regardless of lease or deed conveyance, is subject to reversion back to the federal government.



# APPENDIX A: HELPFUL LINKS

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT RESOURCES

You can find available properties, appeal suitability determinations, and learn more about the Title V program at:

<https://www.hudexchange.info/programs/title-v/>

## U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES RESOURCES

You can find model forms and learn more about the Title V application process at:

[http://www.psc.gov/additional-resources/real-property-management/property\\_management](http://www.psc.gov/additional-resources/real-property-management/property_management)

## GENERAL SERVICES ADMINISTRATION RESOURCES

You can find additional information about the Title V program and available properties, and also learn how to obtain available surplus personal property, at:

<https://disposal.gsa.gov/HomelessAssistance>



# APPENDIX B: RELEVANT STATUTORY AND REGULATORY PROVISIONS

## FEDERAL STATUTES

42 U.S.C. § 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless available at <https://www.gpo.gov/fdsys/granule/USCODE-1999-title42/USCODE-1999-title42-chap119-subchapV-sec11411>.

Public Law No: 114-287, Federal Assets Sale and Transfer Act available at <https://www.congress.gov/bill/114th-congress/house-bill/4465>.

## FEDERAL REGULATIONS

24 C.F.R. § 581. “Use of federal real property to assist the homeless” available at <https://www.law.cornell.edu/cfr/text/24/part-581>.

45 C.F.R. § 12. “Disposal and utilization of surplus real property for public health purposes” available at <https://www.law.cornell.edu/cfr/text/45/part-12>.

45 C.F.R. Part 12a. “Use of federal real property to assist the homeless” available at <https://www.law.cornell.edu/cfr/text/45/part-12a>.



# APPENDIX C: COURT ORDERS

**National Law Center on Homelessness and Poverty, et al. v. United States Veterans Administration, et al., 931 F.Supp.2d 167 (D.C.C. March 21, 2013)**

Title V of the Stewart B. McKinney **Homeless** Assistance Act of 1987 (“McKinney Act”) requires federal agencies to make their unneeded property available for use by the **homeless**. 42 U.S.C. § 11411. Defendants have moved the Court to vacate a twenty-year-old judicial Order designed to ensure federal agencies’ compliance with that statute. Defs.’ Mot. To Vacate, ECF No. 568. Plaintiffs oppose this motion and seek a further expansion of the 1993 Order. Pls.’ Mot., ECF No. 622. Because the Court finds troubling indications of widespread noncompliance, it will DENY defendants’ motion to vacate and will GRANT plaintiffs’ motion to expand the Order.

## I. BACKGROUND

“While this is an old case, it’s an important one, with real consequences for people who have fallen about as far down in the depths as one can in this country.” *Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Dep’t of Veterans Affairs (“NLCHP Motion to Compel Decision ”)*, 842 F.Supp.2d 127, 132 (D.D.C.2012). *Because the background of this case has been reviewed many times, see, e.g., id. at 129–30; Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin. (“NLCHP Preemption Decision ”)*, 98 F.Supp.2d 25, 26 (D.D.C.2000); \*171 *Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin. (“NLCHP Summary Judgment Decision ”)*, 1988 WL 136958, \*1–4 (D.D.C. Dec. 15, 1988), this opinion repeats only relevant details.

The McKinney Act (as amended) and implementing regulations set out the following process<sup>1</sup> for making certain federal property available to the **homeless**:

*Canvassing of Agencies:* HUD is charged with performing a quarterly canvass of all federal landholding agencies to collect data on properties that are designated as “excess,” “surplus,” “unutilized,” or “underutilized.” 42 U.S.C. § 11411(a); 45 C.F.R. § 12a.3(a). Agencies have 25 days to respond. 42 U.S.C. § 11411(a); 45 C.F.R. § 12a.3(a)(2).

*Suitability Determination:* Upon receipt of information from landholding agencies, HUD must identify which, if any, of these properties are “suitable” for use to assist the **homeless** within 30 days. 42 U.S.C. § 11411(a).

*Availability Determination:* Once HUD determines that a property is “suitable” and notifies the landholding agency, the agency has 45 days to respond—either by making the property available, or explaining why the property cannot be made available, such as a “further and compelling Federal need for the property.” 42 U.S.C. § 11411(b)(1).

*Publication of Properties:* HUD is required to publish in the Federal Register a list of all properties deemed available as well as all other properties it reviewed in its initial canvass. 42 U.S.C. § 11411(c)(1); 45 C.F.R. § 12a.8.

*Application for Properties:* Representatives of the **homeless** have 60 days from the date of publication to submit to HHS an “expression of interest” in an available property, 45 C.F.R. § 12a.9(a), and 90 days from then to apply for the property. *Id.* § 12a.9(d). HHS must take action within 25 days of receipt of an application. 42 U.S.C. § 11411(e).

*Making Property Available:* If HHS approves an application, it must make the property available for use by the **homeless** in deed or lease of no less than one year in duration. 42 U.S.C. § 11411(f).

*Outreach:* HUD, GSA, and HHS are to “make such efforts as are necessary to ensure the widest possible dissemination of the information” regarding available federal properties. 42 U.S.C. § 11411(c)(2)(B).

In 1988, plaintiffs<sup>2</sup> sued various federal agencies<sup>3</sup> for violating the Act. Judge Gasch entered permanent injunctive relief imposing requirements on defendants beyond those mandated under the statute (at the time). *NLCHP Summary Judgment Decision, 1988 WL 136958*. The Court subsequently modified and updated the Order on several occasions, most recently in 1993. *See Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin. (“NLCHP Order Modification Decision ”)*, 819 F.Supp. 69 (D.D.C.1993). The Order, \*172 as amended and consolidated in the 1993 opinion, now overlaps substantially with the statute (as amended).

Two decades later, defendants moved to vacate the 1993 Order. *See* Defs.’ Mot. Because the motion “contain[ed] no evidence supporting their claim that changed circumstances warrant this Court’s exercise of its equitable powers to dissolve the longstanding injunction,” the Court granted (in part) plaintiffs’ motion to compel discovery. *NLCHP Motion to Compel Decision, 842 F.Supp.2d at 129, 131*. Plaintiffs now oppose defendants’ motion to vacate and have asked this Court to further expand the Order.

## II. LEGAL STANDARD

123 Federal Rule of Civil Procedure 60(b)(5) permits a party to obtain relief from a judgment or order if “applying [the judgment or order] prospectively is no longer equitable.” The Rule “provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in **law** renders continued enforcement detrimental to the public interest.” *Horne v. Flores, 557 U.S. 433, 447, 129 S.Ct. 2579, 174 L.Ed.2d 406 (2009)* (internal quotations and citations omitted). “If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.” *Id. at 450, 129 S.Ct. 2579*. “The party seeking relief bears the

burden of establishing that changed circumstances warrant relief but once a party carries this burden, a court abuses its discretion when it refuses to modify an injunction or consent decree in light of such changes.” *Id.* at 447, 129 S.Ct. 2579 (internal quotations and citations omitted).

### III. ANALYSIS

The Court’s analysis will proceed in three parts. First, defendants’ motion to vacate the Order will be denied. Second, plaintiffs’ motion to enlarge the Order will be granted. Third, the Court will undertake some “housekeeping”—updating the Order to reflect certain changes in the intervening decades since it was last amended.

#### A. Defendants’ Request to Vacate the Order Is Denied

##### 1. Defendants have Failed to Establish that a Durable Remedy Has Been Implemented

4 Defendants have failed to meet their burden of “establishing that changed circumstances warrant relief.” *Horne*, 557 U.S. at 447, 129 S.Ct. 2579. They claim to have “eliminated the systematic causes of the alleged violations that formed the basis of this lawsuit” and to have “implemented a robust system for complying with Title V of the McKinney Act,” rendering the Order no longer necessary. Defs.’ Reply 8. To that effect, they also claim an “eighteen-year unblemished record of compliance” and argue that, “[b]ecause the remedy provided by the Order has been achieved and is demonstrably durable ... ongoing enforcement is unnecessary.”<sup>4</sup> \*173 Defs.’ Mot. 1, 6–7. But while plaintiffs concede that “[d]efendants generally have procedures in place to implement the statutory directives *once properties are appropriately reported to GSA and/or HUD*,”<sup>5</sup> Pls.’ Mem. 31, they also identify systemic failures at the front-end of the Title V process that preclude this Court from finding a change in circumstances warranting vacating the Order.

Many landholding agencies appear to be failing to fairly and accurately report their Title V eligible property, as required under both the statute and Order. Plaintiffs point to the large discrepancy between relatively modest numbers of properties reported to HUD pursuant to the Act (and published in the *Federal Register*) and the much larger number of federal properties listed in other governmental reports and statements. See Pls.’ Mem. 8–12, 35–41; Pls.’ Reply 3–7. On the one hand, plaintiffs’ analysis shows that between 1995 and 2011, a total of 27,745 unique properties were reviewed and recorded pursuant to the Act in the *Federal Register*.<sup>6</sup> Decl. of Christopher Makuc ¶¶ 11–13, ECF No. 622–9. On the other hand, a September 2010 memorandum by the Office of Management and Budget (“OMB”) stated that “[c]urrently, Federal agencies operate and maintain more real property assets than necessary, with 14,000 buildings and structures designated as excess and 55,000 identified as either under- or not-utilized.” Presidential Mem., Accountable Government Initiative, Sept. 14, 2010,<sup>7</sup> ECF No. 622–4 (emphasis added). And, in a July 2011 House Committee on Oversight and Government Reform hearing, several

Congressmen referred to information provided by OMB revealing that there were 14,000 “excess” properties and 76,000 that were “under-utilized.” *Disposal of Real Property: Legislative Proposals: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (2011), ECF No. 622–42.

These figures present a significant discrepancy. OMB states that there were almost 100,000 excess or underutilized properties at one single moment—more than three times the total number of properties \*174 reviewed under the Act *over the course of 16 years*. Landholding agencies appear to be hiding potentially eligible properties from the Title V process. A GSA official’s testimony in 2011 before a Senate Subcommittee lends additional support to this interpretation:

When we ask agencies, well, how about this property out there, it looks like you’re not using it terribly intensively, often the answer is well, but things’ll change. We might need it. And so in essence we have some federal agencies—and GSA—I’m—I’ll have to admit in some cases has done this too—that *the agencies are in essence landbanking the property*. And to be able to say to them I don’t really think you need that, and it’s time to—it’s time to move on an[d] time to think differently about how you do your function and go someplace else—that’s something that we could use a little bit more clout to do.<sup>8</sup>

*Federal Asset Management, Eliminating Waste by Disposing of Unneeded Federal Property, Hearing Before the Fed. Fin. Mgmt., Gov’t Info., Fed. Servs., & Int’l Sec. Subcomm. of the S. Comm. on Homeland Sec. & Gov’t Affairs*, 112th Cong. (2011) (statement of Robert Peck) ECF No. 622–17.

Defendants do not contest plaintiffs’ factual assertion that agencies are landbanking. They all but concede that plaintiffs’ interpretation of the numerical discrepancy suggests that agencies are keeping Title V eligible land off the books. See Defs.’ Reply 20–21. Rather, defendants insist that this practice is irrelevant to the Court’s task of assessing whether defendants have demonstrated compliance with the 1993 Order because the landholding agencies’ initial “property designation decisions are committed to agency discretion by law” and are therefore “outside the scope of the 1993 order” and beyond this Court’s authority to review. Defs.’ Reply 21. Defendants’ position is that landholding agencies may freely opt out of the Act and Order without violating either simply by refusing to provide accurate information about potentially eligible properties when that information is solicited. Defs.’ Reply 21 (“Defendants have no control over property designation decisions made by other government agencies. Thus, such agency designation decisions are simply irrelevant to defendants’ compliance with the 1993 Order.” (citations omitted)). Based on their behavior, the landholding agencies appear to have endorsed this view.

<sup>56</sup> The Court disagrees. Under the APA, courts have jurisdiction to review agency inaction where the agency has failed to take a “discrete agency action that it is required to take.” *Norton v. S. Utah Wilderness Alliance (“SUWA”)*, 542 U.S. 55, 64, 124 S.Ct. 2373, 159 L.Ed.2d 137 (2004). Separately, courts also have “broad discretion

in using its inherent equitable powers to ensure compliance with [their own] orders.” *NLCHP Motion to Compel Decision*, 842 F.Supp.2d at 131.

78 The 1993 Order imposes reporting requirements on landholding agencies in unmistakably mandatory terms. *NLCHP Order Modification Decision*, 819 F.Supp. at 77 ¶ 4 (ordering that landholding agencies “shall report to HUD, no more than 25 days after receiving HUD’s request for information, any and all excess, \*175 surplus, unutilized, or underutilized properties owned or controlled by the agencies” (emphasis added)). The Order enumerates four categories of property that each landholding agency must disclose: surplus, excess, unutilized, and underutilized. The statute defines “excess” property as “property under the control of a federal agency that the head of the agency determines is not required to meet the agency’s needs or responsibilities.” 40 U.S.C. § 102(3); see also 42 U.S.C. § 11411(i)(2) (adopting definition). This definition undoubtedly accords a fair measure of discretion to the agency. However, this discretion is not without limit: a landholding agency *must* list any property as “excess” that meets the definition and may avoid listing a property as “excess” *only if* it does not. Each listing determination is, therefore, a “discrete agency action that it is required to take” and is thus amenable to this Court’s review. *SUWA*, 542 U.S. at 64, 124 S.Ct. 2373; see also Defs.’ Reply 22.<sup>9</sup>

The statute itself does not define “unutilized” or “underutilized” property, but implementing regulations establish the following definitions: “Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable Executive agency or occupied in caretaker status only.” 41 C.F.R. § 102–75.1160; accord 45 C.F.R. § 12a.1; 24 C.F.R. § 581.1. “Underutilized means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.” 41 C.F.R. § 102–75.1160; accord 45 C.F.R. § 12a.1; 24 C.F.R. § 581.1. Again, these definitions confirm that the 1993 Order’s requirement that agencies report all properties conforming to these definitions creates “discrete agency action[s] that it is *required to take*” and which are not beyond this Court’s review.<sup>10</sup> *SUWA*, 542 U.S. at 64, 124 S.Ct. 2373.

Even if there were no authority for jurisdiction over landbanking as a statutory violation, the Court would still be within its broad equitable discretion to find that landbanking violates its 1993 Order. See *NLCHP Motion to Compel Decision*, 842 F.Supp.2d at 131. Agencies’ failure to accurately respond to HUD canvasses runs afoul of the Order’s requirement that HUD “collect information regarding *all* property declared excess or surplus, ... unutilized or underutilized....” Order ¶ 2.

In sum, landbanking, which defendants concede has been occurring in significant volume, constitutes a serious violation of both the Act and the 1993 Order. Accordingly, the Court concludes that defendants cannot show that a “durable remedy” has been

implemented and will DENY defendants’ motion to vacate the Order.

## 2. The Fact that Some Provisions in the 1993 Order Are Codified in Federal Statutes Does Not Require Vacating the Order

9 Defendants further argue that the Order should be vacated as unnecessary \*176 because many of its provisions have been codified in federal statutes and regulations. Defs.’ Mem. 7–12. This argument also fails.

Rule 60(b) “provides a means by which a party can ask a court to modify or vacate a judgment or order if a *significant change ... in law* renders continued enforcement detrimental to the public interest.” *Horne v. Flores*, 557 U.S. at 447, 129 S.Ct. 2579 (emphasis added).

Here, the government concedes that the vast majority of the federal statutes and regulations that it relies on were enacted and promulgated in 1990 and 1991.<sup>11</sup> Defs.’ Mem. 7. Judge Gasch entered the updated version of the Order in 1993. The statutes and regulations in question were already in place when Judge Gasch entered the Order. Accordingly, there has been no “significant change in law” since the 1993 Order justifying relief under Rule 60(b). See *Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin.*, 88–cv–2503, 1992 WL 44324, \*1–2 (D.D.C.) (rejecting a similar argument).

### B. The Court Grants Plaintiffs’ Request to Expand the Order to Combat Landbanking

10 Having recognized landbanking as a threat to compliance with the 1993 Order, the Court now considers plaintiffs’ request to expand the Order to combat this problem.

Again, and “[a]s noted ... by Judge Gasch and this Court at various stages of this litigation, a federal court has broad discretion in using its inherent equitable powers to ensure compliance with its orders.” *NLCHP Motion to Compel Decision*, 842 F.Supp.2d at 131 (citing *Shillitani v. United States*, 384 U.S. 364, 370, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)). “These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.* (quoting *Chambers*, 501 U.S. at 43, 111 S.Ct. 2123).

Plaintiffs propose amending the Order to require GSA or HUD to annually check the responses to their canvasses from landholding agencies against a database of federal properties maintained by GSA known as the Federal Real Property Profile (“FRPP”). Pls.’ Mem. 42–45. The FRPP database arises out of a 2004 Executive Order, see Executive Order 13327, directing GSA to “establish and maintain a single, comprehensive, and descriptive database of all real property under the custody and control of all executive branch agencies....” 69 Fed.Reg. 5897, 5899 (Feb. 4, 2004).

This database is the source of the OMB figures cited above and

appears to be an appropriate and useful comparator. Like Title V, the FRPP requires agencies to report properties that are, *inter alia*, “excess and surplus,” 41 C.F.R. § 102–84.40(d), as well as “underutilized” and “unutilized,” see U.S. Gov’t Accountability Office, GAO–12–645, *Federal Property: National Strategy and Better Data Needed to Improve Management of Excess and Underutilized Property* (2012) (“GAO Report”), available at <http://www.gao.gov/assets/600/591751.pdf>. A GSA official gave testimony indicating that GSA, as a landholder, treats the term “excess” as identical under Title V as in the FRPP. GSA Dep. 104:11–105:11, 118:13–120:14. Similarly, a GAO Report on the FRPP relies on the same definition of “excess” and \*177 “underutilized” property as Title V. See GAO Report 2 n. 4.

The defendants complain that these terms are not defined identically across the two programs because different agency officials are charged with implementation: while “the head of each agency is responsible ... for determining whether a property is excess for McKinney Act purposes,” “other agency officials may report properties to the FRPP” so that “there is no certainty that a property reported as excess in the FRPP database would necessarily be deemed excess by the head of the agency for purposes of McKinney Act disposal.” Defs.’ Reply 26. While defendants correctly acknowledge that there is apparently little or no consistency across and within agencies regarding compliance with the McKinney Act and the FRPP, this is precisely the problem. While this personnel difference might help *explain* the gulf between the results obtained by the FRPP and McKinney Act surveys, it certainly does not *justify* it.

Plaintiffs suggest that an annual comparison between the properties reported under FRPP and the McKinney Act might “provide a simple, useful and comprehensive tool to assess compliance.” Pls.’ Reply 16. This Court agrees and will enter an Order accordingly.

The Court will further order GSA and HUD to develop a plan for additional and improved training programs for landholding agencies that will ensure they are complying with the reporting requirements of the Act and Order.

### C. Housekeeping

11 One provision in the 1993 Order has been superseded by subsequently enacted statutes. The last three sentences of paragraph 15 of the 1993 Order require that in each community where a military base closure is scheduled defendants sponsor a workshop or seminar to educate potential applicants about the McKinney Act program. This requirement has been superseded by a provision of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub.L. No. 103–421 (Oct. 25, 1994) (codified at 42 U.S.C. § 11411(h)(1)), which makes the McKinney Act inapplicable to these facilities. See Pls.’ Mem. 23–24; Defs.’ Mem. 12. Accordingly, the Court will remove those sentences from the Order.

12 Defendants argue that two other provisions of the 1993 Order should be removed as “obsolete.” First, they point to paragraph 10

of the Order, which requires that HHS indicate in the application packet that a certain publication is available which lists possible sources of funding is available. Defendants argue, and plaintiffs concede, that this publication, entitled *Federal Programs to Help Homeless People*, has not been published since 1993. See Defs.’ Mem. 11 n. 7; Pls.’ Mem. 24. However, as plaintiffs show, the publication remains available and may still be purchased through HUD online. See HUD User Web Store, *Federal Programs to Help Homeless People* (1993), available at [http://webstore.huduser.org/catalog/product\\_info.php/cPath/2/products\\_id/7548](http://webstore.huduser.org/catalog/product_info.php/cPath/2/products_id/7548). Accordingly, the Court will not vacate this provision.

13 Second, defendants point to paragraph 14 of the Order, which directs HHS to “allow an intent to apply for Title IV funds to be sufficient to satisfy the homeless provider’s financial showing requirement.” See Defs.’ Mem. 14–15. Defendants argue that this requirement has become obsolete because homeless providers no longer apply directly to HUD for financial assistance, but rather these applications are “funneled through ... a ‘Continuum of Care’ ... a local network \*178 of homeless assistance providers, state and local governments.” Defs.’ Mem. 15. The Court does not find that this change in the underlying funding regimes affects the command in paragraph 14 and will not vacate this provision.

### IV. CONCLUSION

For the foregoing reasons, the Court will DENY defendants’ motion to vacate the Order, and will GRANT plaintiffs’ motion expand the Order.

An Order shall issue with this opinion.

**National Law Center on Homelessness and Poverty, et al. v. United States Veterans Administration, et al., 819 F.Supp. 69 (D.C.C. April 21, 1993).**

GASCH, District Judge.

This matter is before the Court on plaintiffs’ motion to modify and further enforce the permanent injunction which this Court issued on December 15, 1988, and defendants’ response thereto. The permanent injunction ordered defendants to comply with section 501 of the Stewart B. McKinney Homeless Assistance Act, codified at 42 U.S.C. § 11411, which requires defendants to make vacant federal properties available to assist the homeless. This Court has further enforced the injunction on two occasions. See *National Law Center on Homelessness and Poverty v. United States Veterans Admin., 765 F.Supp. 1 (D.D.C.1991)*; *id.* at 13 (on defendants’ motion to alter or amend). While these enforcement decisions were pending, Congress passed the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, Pub.L. No. 101–645, § 401, 104 Stat. 4719 (1990), which modified the procedure by which defendants make properties available to homeless providers. Plaintiffs now ask the Court to order further injunctive relief and to modify the permanent injunction consistent with the recent amendments. Plaintiffs’ proposed modifications are set forth in a Proposed Order. Defendants object to paragraphs 2, 3, 4, 6, 10, 14,

15, 16 and 17 of plaintiffs' Proposed Order.<sup>1</sup> The Court will address each of the contested proposed modifications in turn.

### 1. Comprehensive Quarterly Canvassing (Proposed Order ¶ 2)

<sup>1</sup>The 1990 Amendments to the McKinney Act provide, in pertinent part, that

[t]he Secretary of Housing and Urban Development ["HUD"] 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 483(b)(2) of Title 40 [The Federal Property and Administrative Services Act of 1949].

[42 U.S.C. § 11411\(a\)\(1990\)](#). Defendants contend that each quarterly canvass should be supplemental rather than comprehensive *i.e.*, HUD should be required to report only those excess, surplus, unutilized or underutilized properties which have changed in status or classification since the last quarter. Plaintiffs maintain that comprehensive quarterly canvassing is required. However, in an effort to accommodate defendants, plaintiffs have proposed comprehensive quarterly canvassing in the first and third quarters only.

The question whether HUD's quarterly canvass must be comprehensive or supplemental is not new to this Court. Indeed, the same arguments advanced in the motion *sub judice* were presented to the Court when it was asked to interpret and further enforce its permanent injunction. See [National Law Center on Homelessness and Poverty v. United States Veterans Admin.](#), 765 F.Supp. at 6–7. There, this Court found "that its Permanent Injunction requires the government to perform a comprehensive canvass every quarter. The language of the injunction could not be more clear—HUD shall 'canvass all land-holding agencies quarterly.'" [Id. at 6.](#)<sup>2</sup>

Although the statutory language does vary slightly from the language of this Court's permanent injunction (compare [42 U.S.C. § 11411\(a\)](#), *supra*, with footnote 2), the plain meaning has not changed. The only possibly relevant distinction between this Court's permanent \*72 injunction and the statutory language is the latter's reference to "each landholding agency" as opposed to "all landholding agencies." But this distinction is an insufficient basis for this Court to conclude that Congress intended supplemental quarterly canvassing rather than comprehensive canvassing. If Congress had intended supplemental quarterly canvassing, it would have said so.

Nevertheless, the Court is mindful that the comprehensive quarterly canvassing requirement has been a constant source of complaint. Defendants contend that the comprehensive quarterly canvassing requirement frustrates the efforts of the General Service Administration ("GSA") to dispose of surplus property, as

required by the Federal Property and Administrative Services Act of 1949, [40 U.S.C. § 484 \(1984\)](#).<sup>3</sup> Although plaintiffs continue to believe that defendants' argument for supplemental canvassing lacks merit, they have proposed a compromise.

<sup>2</sup> Plaintiffs propose comprehensive canvassing in the first and third quarters, and supplemental canvassing in the second and fourth quarters. See Proposed Order at ¶ 2. Under this scheme, defendants need only report, in the second and fourth quarters, property not identified in the prior quarter's canvass, or property that was included but has changed in status. The Court finds that plaintiffs' proposal is a reasonable one. Clearly, defendants' argument for supplemental canvassing in every quarter is contrary to the plain meaning of the statute and this Court's prior interpretation of the permanent injunction. However, the Court is reluctant to require comprehensive canvassing in every quarter if the parties agree that comprehensive canvassing in each alternative quarter will achieve the same end, namely, to make homeless providers aware of suitable, available federal properties. In short, plaintiffs have proposed a fair and reasonable *via media*, and the Court will adopt ¶ 2 of the Proposed Order.

### 2. Reporting Back to HUD (Proposed Order ¶ 4)<sup>4</sup>

<sup>3</sup> The 1990 Amendments further provide:

No later than 25 days after receiving a request [from HUD for information on excess, surplus, unutilized or underutilized properties], the head of each landholding agency shall transmit such information to [HUD].

[42 U.S.C. § 11411\(a\)](#). Defendants argue that plaintiffs' proposed ¶ 4 should be rejected because there is no evidence that non-party land-holding agencies have violated their duties under section 501 of the McKinney Act. What defendants have failed to realize, however, is that "each" federal land-holding agency has a statutory duty to report back to HUD within a certain time period. Because plaintiffs' proposed modification is virtually identical to the above-quoted statutory language, proposed ¶ 4 will be adopted in full.

### 3. Publication in the *Federal Register* (Proposed Order ¶ 6)

<sup>4</sup> The permanent injunction requires HUD to publish a list of suitable properties in the *Federal Register* on a weekly basis. Since the date of the issuance of the permanent injunction, it has become clear that it would be more beneficial to homeless providers if HUD were to publish only those properties that are both suitable *and* available. \*73 See [National Law Center on Homelessness and Poverty v. United States Veterans Admin.](#), 765 F.Supp. at 7–8. Moreover, the 1990 Amendments specifically require HUD to indicate which properties are available for use by the homeless. [42 U.S.C. § 11411\(c\)\(1\)\(A\)\(ii\)](#). Thus, consistent with the 1990 Amendments, the Court will modify its injunction to the extent that HUD must report only those properties that are both suitable and available.

Question has also been raised whether the Court should continue to require HUD to publish in the *Federal Register* on a weekly basis.

Defendants argue that the 1990 Amendments require quarterly publication. Notwithstanding this argument, defendants appear willing to continue to publish on a weekly basis. In any event, plaintiffs do not insist on weekly publication, but have indicated their support for a compromise which would allow for weekly publication but would require a minimum of monthly publication. See Plaintiffs' Reply To Defendants' Response To Plaintiffs' Motion To Modify And Further Enforce The Permanent Injunction ("Plaintiffs' Reply") at 12.

The Court will adopt plaintiffs' recommendation of monthly publication. Contrary to defendants' argument, the 1990 Amendments do not require quarterly publication; rather, they set a time period within which a given property must be published in the *Federal Register*. See [42 U.S.C. 11411\(c\)\(1\)\(A\)](#) ("No later than 15 days after the last day of the 45 day period [within which land-holding agencies must transmit information on available property to HUD] the Secretary [of HUD] shall publish in the *Federal Register*"). And as plaintiffs point out, this time limitation by no means prohibits the Court from requiring more frequent publication. In addition, the Court finds that monthly publication is appropriate because it would allow HUD some flexibility in the event weekly publication becomes impracticable. If HUD decides to change over to monthly publication, it must give plaintiffs 90 days' notice prior to the effective date and must also publish notice of the change in the *Federal Register*. Finally, the Court urges HUD to continue with its current practice of weekly publication.

#### 4. The Application Package (Proposed Order ¶ 10)

<sup>151</sup> Homeless providers may submit an application to the Secretary of Health and Human Services ("HHS") for any property that is published in the *Federal Register*. [42 U.S.C. § 11411\(e\)\(1\)](#). Plaintiffs now ask the Court to modify its permanent injunction to the extent that HHS must provide certain information in the application packet to assist homeless providers with the filing of applications. Specifically, plaintiffs propose that HHS include with each application for property: 1) a notice identifying the National Law Center for Homelessness and Poverty as an organization available to assist in the application process (including the telephone number of the National Law Center); 2) notice that HHS staff are available to assist homeless providers in the application process (including the telephone number of the relevant staff persons); 3) a fact sheet describing possible funding sources; and 4) notice that the Interagency Council on Homelessness may be able to help identify possible sources of funding (including the Interagency Council's telephone number). Defendants object to plaintiffs' first and third proposals.

Defendants argue that it would be improper for HHS to include the name and telephone number of plaintiff National Law Center in the application packet because to do so would show bias in favor of the National Law Center and would disadvantage other homeless assistance organizations. Defendants' argument ignores the fact that the National Law Center is a nonprofit organization, the purpose of which is to assist the homeless. In that regard,

the National Law Center, if identified in the application packet, would merely further the common goal of all homeless assistance organizations by helping homeless providers complete the application process. In short, the Court would rather include the name of at least one homeless organization, and thereby further the goals of the McKinney Act, than not include that information under the guise of neutrality.

Defendants also argue that HHS should not be required to prepare a list of possible funding sources to accompany the application \*74 packet. The Court agrees with this argument. As defendants point out, HHS is not familiar with state, local and private sources of funding. Moreover, HHS has agreed to include in the application packet a statement that the *Federal Programs to Help Homeless People* publication is available from the Interagency Council. This publication contains information on over one hundred federal programs available to assist the homeless. Access to this publication would serve the end of putting homeless providers into contact with potential funding sources. Thus, the Court will modify its permanent injunction to the extent that HHS must include a statement indicating the availability of this publication and also the Interagency Council's telephone number.

#### 5. The Financial Showing Requirement (Proposed Order ¶ 14)

Proposed Order ¶ 14 provides that "HHS must allow an intent to apply for Title IV funds to be sufficient to satisfy the homeless provider's financial showing requirement." This language remains unchanged from this Court's February 13, 1991, Order at ¶ 6, in which the Court further enforced the permanent injunction. Defendants complain that this language should be modified in light of the Court of Appeals' decision in [National Law Center on Homelessness and Poverty v. United States Department of Veterans Affairs, 964 F.2d 1210 \(D.C.Cir.1992\)](#). There, the Court of Appeals held that an applicant's intent to apply for funds "require[s] only that HHS give *qualified approval* to a wholly unfunded otherwise acceptable application for surplus property." *Id.* at 1212 (emphasis in original). That is, HHS must certify that the applicant could legitimately receive the requested property, but for the fact that the applicant lacks sufficient financial resources. *Id.* at 1213.

The Court does not find it necessary to incorporate the appellate court's interpretation of the February 13, 1991, Order, into the permanent injunction itself. The Court of Appeals not only interpreted this Court's February 1991 Order (the second enforcement decision), it also affirmed that Order. Thus, ¶ 6 of the February 13, 1991, Order, which contains the same language proposed by plaintiffs in Proposed Order ¶ 14, has been specifically upheld by the Court of Appeals. While this Court adopts the Court of Appeals' interpretation of the February 1991 order, it need not, absent remand and specific instructions from the Court of Appeals, change the language of the injunction. Therefore, Proposed Order ¶ 14 will be adopted in full.

#### 6. Outreach (Proposed Order ¶ 15)

The Court has previously ordered defendants to "initiate an



outreach program that provides direct information to homeless providers on the properties that are available in their localities.” Order of February 13, 1991, at ¶ 7. Plaintiffs do not now argue that defendants are in total derogation of the court’s prior order. Instead, plaintiffs argue that while defendants’ efforts have improved, they have still not implemented adequate measures to reach out and spread information about the McKinney Act. See Plaintiffs’ Reply at 5. Thus, plaintiffs propose a variety of new outreach measures.

<sup>161</sup> Plaintiffs’ first new outreach proposal concerns the dissemination of lists of available properties to homeless providers. Specifically, plaintiffs propose that defendants, in addition to reporting suitable and available properties in the *Federal Register*, mail lists of these properties to homeless providers and also publicize the availability of these properties in local newspapers and periodicals. See Proposed Order ¶ 15(a). Defendants maintain that they already undertake a variety of efforts to directly inform homeless providers and the general public about Title V of the McKinney Act and the availability of suitable properties. See Defendants’ Response at 24. The Court finds that defendants have in fact implemented a variety of measures to disseminate information about the McKinney Act and to inform homeless providers of the availability of specific properties.<sup>5</sup> The additional \*75 publication and mailing measures advocated by plaintiffs, while perhaps helpful, would be, for the most part, supplemental to very similar measures which are already in place. Therefore, plaintiffs’ Proposed Order ¶ 15(a) will be rejected.

<sup>171</sup> Plaintiffs’ second proposed outreach activity pertains to military base closures. Plaintiffs propose that defendants sponsor, in each community where a base closure is scheduled, a seminar to educate potential property applicants about the McKinney Act and how to apply for the property. See Proposed Order ¶ 15(b). Defendants object on the ground that the Department of Defense (the “DoD”) already engages in outreach efforts in connection with base closures. The Court has reviewed defendants’ alleged outreach efforts and finds that they are insufficient to educate homeless providers in communities affected by base closures about the operation of the McKinney Act.

Defendants claim that members of the Base Closure and Realignment Office within the Army Corps of Engineers routinely meet with potential property applicants and also participate in regional meetings sponsored by the Interagency Council on Homelessness. See Defendants’ Response at 28; Declaration of Gary Paterson at ¶ 6. In addition, defendants submit that “DoD personnel are accessible for purposes of providing information about available base closure properties.” Defendants’ Response at 28. But, in this Court’s view, the DoD’s “accessibility” and its participation in meetings sponsored by other organizations do not constitute outreach to homeless providers. Under this Court’s prior Order, defendants are required to “initiate an outreach program that provides direct information to homeless providers.” Order of February 13, 1991, at ¶ 7 (emphasis added). Clearly, the Base Closure and Realignment Office of the DoD has yet to initiate

or sponsor an outreach program. Rather, it merely responds to inquiries and attends meetings sponsored by the Interagency Council on Homelessness.

In a similar vein, defendants argue that the DoD’s Office of Economic Adjustment (“OEA”) provides information on the McKinney Act to local communities and organizations which are affected by base closures. Defendants’ Response at 28. However, this information is only provided “at the community’s request.” Declaration of Paul J. Dempsey at ¶ 5. In light of the fact that local communities, if anything, seek to prevent homeless people from moving into their communities,<sup>6</sup> it is not enough for OEA simply to respond to local communities’ requests for information on the McKinney Act. Moreover, it is not enough for the OEA to merely “encourage” local communities to canvass local homeless providers. See Defendants’ Response at 29; Declaration of Paul J. Dempsey at ¶ 5. Rather, the DoD has a duty to “initiate” seminars and dialogue and to disseminate McKinney Act information to homeless providers and local communities. Because \*76 defendants and the DoD have not complied with this duty, plaintiffs’ Proposed Order ¶ 15(b) will be adopted in full.

<sup>181</sup> Plaintiffs have also asked the Court to modify the permanent injunction to the extent that “[d]efendants shall post, in all federal buildings in towns or cities with a population over 50,000, an informational flyer describing the McKinney Act program.” Proposed Order ¶ 15(c). GSA, however, already sends notice of available property to post offices and court buildings in the geographic area where the particular property is located, and also requests that such notices be posted. See Defendants’ Response at 30. Hence, the outreach measure proposed by plaintiffs, although broader in scope, is already in place. In addition, the Court finds that it would be a waste of resources to compel defendants to post general information flyers in every community with a population over 50,000. Many of these communities have not experienced homelessness and, therefore, would not benefit from receipt of the flyer. In short, plaintiffs’ Proposed Order ¶ 15(c) is unnecessary and, therefore, it will be rejected.

Finally, in Proposed Order ¶ 15(d), plaintiffs ask the Court to modify the permanent injunction to the extent that “[d]efendants shall initiate and execute a marketing program for McKinney Act properties.” By plaintiffs’ own concession, however, defendants have implemented a marketing program. See Plaintiffs’ Reply at 4–5. Although plaintiffs complain that defendants’ marketing program is inadequate, the Court finds it to be reasonably capable of drawing attention to McKinney Act properties. Therefore, Proposed Order ¶ 15(d) will be rejected.

## 7. Monthly Reports (Proposed Order ¶ 17)

Presently, GSA, HUD and HHS must submit to the Court and to plaintiffs’ counsel a monthly report identifying properties determined by HUD to be suitable and unsuitable, properties made available to assist the homeless, and those properties sold, transferred or otherwise disposed of. Order of December 13, 1988, at ¶ C(1). Since the date of the issuance of the permanent

injunction, it has become clear that the monthly report is, to say the least, voluminous. To reduce defendants' burden of production, plaintiffs seek to modify the permanent injunction to the extent that defendants need not identify all suitable and unsuitable properties in the monthly report which are reported in the *Federal Register* in any event. Moreover, plaintiffs propose that defendants be required only to submit the monthly report to plaintiffs' counsel—not the Court. See Proposed Order ¶ 17. Defendants do not dispute these proposed modifications; moreover, the Court finds them to be reasonable, and they will be implemented.

<sup>19</sup> Plaintiffs propose some additional modifications to defendants' monthly reporting requirement. Specifically, plaintiffs ask the Court to require defendants GSA, HUD and HHS to submit to plaintiffs' counsel a monthly report identifying: 1) those properties made available to the homeless, including properties made available through an agency other than GSA, HUD or HHS (Proposed Order ¶ 17(i)); 2) those properties sold, transferred or otherwise disposed of (Proposed Order ¶ 17(ii)); and 3) all persons and organizations that have contacted defendants to express interest in applying for McKinney Act property, including the date of the contact and identifies the property which was the subject of the inquiry (Proposed Order ¶ 17(iii)).

Defendants only object to the requirement in proposed ¶ 17(i) that they include in the monthly report properties made available by agencies other than GSA, HUD and HHS. Defendants have not, however, offered a good reason why they cannot include in the monthly report properties made available through another agency. As plaintiffs point out, HHS must process every application for McKinney Act property and, therefore, has ready access to information on properties made available by other agencies. More importantly, the permanent injunction requires GSA, HUD and HHS to include in the monthly report "those properties made available to assist the homeless." Order of December 13, 1988, at ¶ C(1)(iii). The plain meaning of this order does not restrict the identification of properties in the monthly \*77 report to those properties made available by GSA, HUD and HHS only. In short, because Proposed Order ¶ 17(i) is a reasonable clarification of defendants' monthly reporting requirements, it will be adopted along with Proposed Order ¶¶ 17(ii) and (iii).

## CONCLUSION

In summary, the Court believes that defendants' implementation of the McKinney Act has improved since the Court issued its permanent injunction. However, defendants have not fully complied with their obligations under the McKinney Act. Moreover, the passage of the 1990 Amendments and other changes in circumstances warrant some of the modifications to the permanent injunction which have been proposed by plaintiffs. An appropriate order detailing the modifications which have been adopted by the Court will be issued.

## ORDER

Upon consideration of plaintiffs' motion to modify and further enforce the permanent injunction, defendants' response thereto, and for the reasons set forth in the accompanying Memorandum, it by the Court this 21st day of April, 1993,

ORDERED that the Court's Orders filed on December 13, 1988, May 22, 1989, February 13, 1991, and May 2, 1991, be, and they hereby are, modified and consolidated as set forth below:

### I. *Canvassing and Reporting Procedures*

1) Land-holding agencies shall review their property holdings at least annually pursuant to [40 U.S.C. § 483\(b\)](#) and 41 C.F.R. § 101-47.802(a).

2) HUD shall canvass all land-holding agencies quarterly to collect information about unused or underused federal property. HUD's canvass shall include, but not be limited to, collection of information regarding all property declared excess or surplus and all properties declared unutilized or underutilized in surveys made pursuant to [40 U.S.C. § 483\(b\)](#) and 41 C.F.R. § 101-47.802(a) or [Executive Order 12512](#) and 41 C.F.R. § 101-47.802(b). The first and third such quarterly canvasses of each calendar year shall be comprehensive; the second and fourth quarterly canvasses of the same calendar year may be supplemental quarterly canvasses to determine whether land-holding agencies have property that is unutilized, underutilized, excess or surplus, but was not identified in the prior quarter's comprehensive canvass, or was included in the prior quarter's comprehensive canvass but has had a change in status.

3) HUD's canvassing letters must indicate that HUD, and not the land-holding agency, is to make all suitability determinations.

4) Land-holding agencies shall report to HUD, no more than 25 days after receiving HUD's request for information, any and all excess, surplus, unutilized, or underutilized properties owned or controlled by the agencies.

5) HUD shall make suitability determinations of properties identified as surplus, excess, unutilized or underutilized within 30 days after receiving the land-holding agency's canvass response.

6) HUD shall publish a list of suitable and available properties in the *Federal Register* and shall provide a copy of the list to plaintiffs' counsel. HUD must publish this list, at a minimum, once per month. HUD may, however, continue its current practice of weekly publication in the *Federal Register* if it is practicable. In the event HUD decides to change over to monthly publication, it must give plaintiffs 90 days' notice prior to the effective date of the change and must also publish notice of the change in the *Federal Register*.

### II. *Application Process*

7) Properties identified in the *Federal Register* as suitable and available shall not be available for any other purpose for at least 60 days from the date of publication. If a written notice of intent

to apply for such property is received by the Secretary of Health and Human Services within 60 days of publication, such property may not be made available for any other purpose until HHS has completed action on an application for property. Applications shall be submitted within \*78 90 days of the written notice of intent to apply; HHS shall, with the concurrence of the appropriate land-holding agency, extend this period upon reasonable request by the applicant.

8) HHS shall accept and process all applications for property deemed suitable and available by HUD pursuant to the McKinney Act.

9) HHS shall complete its action on the application within 25 days of receipt of a completed application. This period may be extended by agreement of HHS and the applicant. HHS shall make and maintain a written record of all actions taken in response to an application.

10) HHS must provide with each application packet sent to interested persons a notice identifying the plaintiff **National Law Center on Homelessness and Poverty**, giving the National Law Center's telephone number and stating its availability to assist homeless providers in resolving any problems that may arise in the application and leasing processes. HHS must also include notice in the application material that HHS staff persons are available to assist in the application process, and the telephone number that the applicant may call to obtain that assistance. In addition, HHS must include notice that the Interagency Council on Homelessness may be able to help identify possible sources of funding, including the telephone number of the Council. HHS must indicate that the *Federal Programs to Help Homeless People* publication is available from the Interagency Council.

11) HHS must provide with the environmental questionnaire the identity of a direct reference person who can provide the homeless provider with assistance on how to complete the questionnaire.

12) HHS must provide with the environmental questionnaire information on how applicants can obtain environmental information that is within defendants' possession.

13) HHS must, if necessary, provide assistance to applicants in obtaining environmental information that is within the defendants' possession.

14) HHS must allow an intent to apply for Title IV funds to be sufficient to satisfy the homeless provider's financial showing requirement.

### III. Outreach

15) Defendants must initiate an outreach program that provides direct information to homeless providers on the properties that are available in their localities. As part of this program, defendants shall sponsor, in each community where there is a military base closure scheduled, a workshop or seminar to educate potential applicants about the McKinney Act program and how to apply for

property. Defendants shall advertise and promote the holding of such workshop or seminar to reasonably inform those persons and groups who might be interested in the workshop or seminar. Such workshop or seminar shall be held reasonably prior to the availability of the base closure property under the McKinney Act to permit timely application.

16) GSA, HUD and HHS shall submit to plaintiffs' counsel a monthly report identifying for each month: a) those properties made available to assist the homeless, including the status of all applications submitted and pending, even if the property is made available by an agency other than GSA, HUD and HHS; b) those properties sold, transferred or otherwise disposed of; and c) all persons and organizations that have contacted defendants to inquire about applying for any property under the McKinney Act program, the date of the contact and the property which was the subject of the inquiry. GSA, HUD and HHS shall also file with the Court, each month, a certificate that the monthly report has been prepared and delivered to plaintiffs' counsel.

17) Jurisdiction is retained for the purposes of enabling any of the parties to seek such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification of any of the provisions thereof, for the enforcement of compliance and punishment of violations thereof, and to determine \*79 the costs and attorneys' fees that may be recovered by plaintiffs.

### **National Coalition for the Homeless, et al. v. Veterans Administration, et al., 1988 WL 136970 (D.D.C. December 13, 1988)**

\*1 This matter came on for consideration of plaintiffs' motion for summary judgment and the parties having briefed the issue and having been heard in open court, it is by the Court this 12th day of December, 1988,

ORDERED that plaintiffs' motion be, and hereby is, granted; and it is further

ORDERED that defendants, their officers, agents, servants, successors, employees and attorneys, and all parties acting in concert or participation with them or any of them, are required to take the steps set forth below in implementing Section 501 of the McKinney Act:

#### *(A) Immediate Relief:*

As to all properties currently in GSA's inventory of excess and surplus properties, defendants shall make suitable properties available to the homeless as follows:

(1) Using either the suitability information provided by defendant GSA on October 12, 1988 or the more recent suitability questions provided to GSA on or about November 28, 1988, HUD shall make suitability determinations, as soon as possible, but in any event no later than December 28, 1988, for at least half of the properties currently in GSA's inventory of excess and surplus properties.

Suitability determinations for the remaining properties shall be made no later than January 12, 1989. HUD shall maintain a written record of the reasons for its determinations. It shall furnish a list of suitable properties to both GSA and HHS as determinations are made.

(2) HUD shall, on a weekly basis, publish a list of suitable properties in the *Federal Register* and shall provide a copy of the list to plaintiffs' counsel.

(3) Properties determined suitable shall not be available for any other purpose for at least 30 days. Once an application is received for utilization of that property by representatives of the homeless, that property may not be sold, transferred, or otherwise disposed of until HHS has completed its action on the application.

(4) HHS shall complete its action on the application within 15 days of receipt of a completed application. This period may be extended by agreement of HHS and the applicant. HHS shall make and maintain a written record of all actions taken in response to an application.

(5) Defendants are enjoined from selling, transferring, or otherwise disposing of any of the excess or surplus properties in GSA's inventory as of the date of this Order for a period of two weeks following determination of unsuitability.

*(B) Continuing Relief:*

(1) Land-holding agencies shall review their property holdings at least annually pursuant to [40 U.S.C. § 483\(b\)](#) and [41 C.F.R. § 101-47.802\(a\)](#).

(2) HUD shall canvass all land-holding agencies quarterly to collect information about unused or underused federal property. HUD's canvass shall include, but not be limited to, collection of information regarding all property declared excess or surplus and all properties declared unutilized or underutilized in surveys made pursuant to [40 U.S.C. § 483\(b\)](#) and [41 C.F.R. § 101-47.802\(a\)](#) or [Executive Order 12512](#) and [41 C.F.R. § 101-47.802\(b\)](#). The next such canvass shall be made no more than 90 days following the entry of this Order.

**\*2** (3) Land-holding agencies shall report to HUD, no more than 25 days after receiving HUD's request for information, any and all excess, unutilized, or underutilized properties owned or controlled by the agencies. Land-holding agencies shall provide responses to the request made by HUD on or about November 28, 1988, no later than December 23, 1988.

(4) HUD shall make suitability determinations of properties identified as surplus, excess, unutilized, or underutilized within two months after each such canvass.

(5) The provisions set forth in Paragraphs (A)(2), (A)(3), and (A)(4), *supra*, will apply to properties identified as a result of the quarterly canvass undertaken by HUD.

*(B) Continuing Jurisdiction and Compliance:*

(1) GSA, HUD and HHS shall submit to the Court and to plaintiffs' counsel, beginning on January 15, 1989, a monthly report identifying for each month: (i) those properties determined to be suitable by HUD; (ii) those properties determined to be unsuitable and the reasons therefor; (iii) those properties made available to assist the homeless; and (iv) those properties sold, transferred, or otherwise disposed of.

(2) Jurisdiction is retained for the purposes of enabling any of the parties to seek such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification of any of the provisions thereof, for the enforcement of compliance and punishment of violations thereof, and to determine the costs and attorneys' fees that shall be recoverable by plaintiffs.

evaluate the suitability of the properties again required the controlling agencies to make that evaluation. The heart of the questionnaire is questions two and three, which ask whether the building is suitable as a shelter or for daytime activities, and why. Questionnaire from HUD, Attachment D to Bourne Declaration. The responses of the respective agencies confirm that the agencies, not HUD, made the suitability determination. The Navy, for example, was "unable to identify any facilities that would be suitable." Declaration of Steven Klienman, Director of Homeless Assistance Program, DOD. The VA, too, had "no available or suitable excess VA properties." Declaration of Dr. John Gronvall, Chief Medical Director, VA.

## APPENDIX D: LIST OF TITLE V TRANSFEREES

For more information about the listed programs, please refer to our reports, “This Land is Your Land: How Surplus Federal Property Can Prevent and End Homelessness”<sup>12</sup> and “Unused (But Still Useful): Acquiring Federal Property to Serve Homeless People.”<sup>13</sup>

TRANSFEREE	FACILITY NAME	STATE	CITY
Tundra Women's Coalition	Bethel Army Advisor Housing	AK	Bethel
Catholic Social Services, Inc.	Anchorage Duplexes - Brown St.	AK	Anchorage
Our House, Inc.	VA Medical Center	AR	Little Rock
Salvation Army, A Georgia Corp.	Federal Building	AR	Benton
Quapaw House, Inc.	SSA/Federal Building	AR	Hot Springs
The Family Center, Inc.	Social Security Admin. Building	AR	Helena
Esperanza en Escalante	Tract #3, Davis Monthan AFB	AZ	Tucson
House of Refuge	(P) Williams AFB	AZ	Mesa
Community Housing Partnership	(P) Williams AFB	AZ	Mesa
House of Refuge East	(P) Williams AFB	AZ	Mesa
County of Sacramento	Former Mather AFB	CA	Rancho Cordova
Shelter Outreach Plus	FT. Ord	CA	FT. Ord
Interim, Inc.	Ft. Ord	CA	Ft. Ord
California Emergency Foodlink	Sacramento Army Depot	CA	Sacramento
Veterans Transit. Center of Monterey	(P) FT. Ord	CA	FT. Ord
Shelter Outreach Plus	Ft. Ord - Buildings 6279 & 6280	CA	Ft. Ord
Grace Apostolic Church	Norton AFB - Parcel "J"	CA	San Bernadino
Comm. Soc. Model Advoc., Inc.	Castle AFB	CA	Atwater
The Salvation Army	VA Triangular Parcel	CA	Los Angeles
Housing Auth. County of Monterey	(F) Ft. Ord - BLDG. 4481	CA	Seaside
Vietnam Veterans of CA, Inc.	Redding Reserve Center	CA	Redding
City of Modesto	SSA Building	CA	Modesto
The Salvation Army	Bell Federal Service Center #2	CA	Bell
Shelter Partnership, Inc.	Bell Fed. Service Ctr Bldg 1101	CA	Bell
Veterans Transition Center	Ft. Ord - L9.1.1.2 & L9.1.2.2	CA	Marina
Volunteers of America of L. A.	Boyle Heights SSA Building	CA	Los Angeles
Third Way Center	Lowry AFB Building 964	CO	Denver
Comm. for Creative Non-Violence	117 D Street, NW	DC	Washington
Metro Dade County	Homestead Air Force Base	FL	Homestead
Mt. Olive Comm. Outreach Ctr.	Boyett Village Family Hsg Complx	GA	Albany
Growing Home, Inc.	National Weather Service Meteor.	IL	Miller Township
N. Cen./Flnt. Hls. Ar. Agy. On Aging	Federal Office Building	KS	Manhattan
Monroe Area Guidance Center	Naval Reserve Center	LA	Monroe
Aftercare Ministries, Inc.	Eugene Nettles Army Reserve Center	LA	Alexandria

<sup>12</sup> See *This Land is Your Land*, supra note 2.

<sup>13</sup> National Law Center on Homelessness and Poverty, *Unused (But Still Useful): Acquiring Federal Property to Serve Homeless People* (Dec. 2004) available at <https://www.nlchp.org/documents/Unused%20But%20Still%20Useful%20-%20December%202004.pdf>.

City of Lynn	Marine Corps Training Center	MA	Lynn
Vietnam Veterans Workshop	VA Clinic	MA	Boston
Advocates for Homeless Families	710 TRAIL AVENUE	MD	Frederick
Catholic Charities of Washington	Waldorf Housing	MD	Waldorf
S. MD Tri-County Community Action	Laplata Housing Units	MD	Laplata
Crossroads Community, Inc.	(P) Stillpond Housing Units	MD	Chestertown
H.O.M.E., INC.	Ellsworth Federal Building	ME	Ellsworth
City of Bangor	(P) Charleston Family Housing	ME	Bangor
Facilities, Inc.	Loring Air Force Base	ME	Caribou
Pontiac Rescue Mission	Furlong Building	MI	Pontiac
The Salvation Army	Arsenal Acres	MI	Warren
The Salvation Army	Duluth Housing Unit	MN	Duluth
Econo Security Corps of SW Area	(F) Durwood G. Hall Fed. Building	MO	Joplin
New Life Evangelistic Center	SSA Bldg.	MO	Springfield
Human Res. Dev. Council	USARC Bozeman Reserve Center	MT	Bozeman
Samaritan House, Inc.	Sonstelie Hall Army Reserve Ctr	MT	Kalispell
Housing Authority of Co. of Scotts Bluff	(F) SSA Building	NE	Scotts Bluff
Paterson Coalition for Housing	(F) Naval Reserve Center	NJ	Clifton
Urban Renewal Corp.	Naval Reserve Center	NJ	Kearny
M.I.P.H., Incorporated	(F) GSA Raritan Depot	NJ	Edison
New Day, Inc.	VA Hospital	NM	Albuquerque
Neighbors of Watertown, Inc.	SSA Trust Fund Building	NY	Watertown
Rockland Housing Action Coalitio	Tappan Army Reserve Center	NY	Orangetown
Community Christian Care Center	Jay Federal Building	OK	Jay
Comm. Mental Health Services Inc	(F) Valley Forge General Hosptia	PA	Phoenixville
United Christian Ministries, Inc	Cowanesque Lake Project	PA	Lawrenceville
Community Mental Health Service	(F) SSA Building	PA	Westchester
Interfaith Hospitality Network	SSA/Federal Building	SC	Rock Hill
New Haven Home, Inc.	Ft. Wolters Clinic	TX	Mineral Wells
City of San Antonio	Federal Building	TX	San Antonio
Concho Valley for Human Devel'mt	Fish Hatchery No. s	TX	San Angelo
Woman, Inc.	(P) Ft. Crockett	TX	Galveston
Union Gospel Mission	(F) SW Division Soil Testing Lab	TX	Dallas
Wintergarden Women's Shelter I	Border Patrol Station	TX	Carrizo Springs
The City of Newport News	Marine Corps Reserve Training Center	VA	Newport News
Prince William County	Woodbridge Military Housing Site	VA	Woodbridge
Central Piedmont Action Council,	Watkins K. Abbitt Federal Bldg	VA	Farmville
The Salvation Army	SSA Trust Fund Building	VA	Lynchburg
NE Kingdom Community Action, Inc	(F) Border Patrol/Customs House	VT	Newport
Rural Resources Community Action	Old Coleville Border Patrol	WA	Coleville
King County Housing Authority	Midway (Nike) Housing Site	WA	Kent
City of Redmond	Coast Guard Housing Site	WA	Redmond
Northwood Health Systems, Inc.	(F) Social Security Admin. Bldg	WV	Wheeling
Worthington Mental Health Servic	Army Reserve Center	WV	Parkersburg
WY Coalition for the Homeless	(F) Naval Reserve Center	WY	Cheyenne