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GSA Policy Regarding Interim Use of Excess and
Surplus Real Property (File B-101646)

Your memorandum of July 22, 1977, requested that we review the legislative history of the Federal Property and Administrative Services Act of 1949 (FPAS), 40 U.S.C. 471 et seq., with regard to those provisions dealing with disposal of excess and surplus real property. You question specifically whether present General Services Administration (GSA) regulations permitting the interim leasing or licensing of excess and surplus real property to non-Federal users are consistent with congressional intent with respect to property management and disposal.

We should say initially that Congress has given GSA broad discretion with respect to the management and disposal of Federal real and personal property. With respect to disposal and interim care and handling of surplus property, section 203 of the FPAS provides in pertinent part that:

"(a) Except as otherwise provided in this section, the Administrator shall have supervision and direction over the disposition of surplus property. Such property shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act.

"(b) The care and handling of surplus property, pending its disposition, and the disposal of surplus property, may be performed by the General Services Administration or, when so determined by the Administrator, by the executive agency in possession thereof or by any other executive agency consenting thereto."

Implementing the FPAS, GSA has issued the Federal Property Management Regulations (FPMR), 41 C.F.R. Part 101. Part 101-47 deals with the utilization and disposal of real property.

41 C.F.R. 101-47.312 provides:

"A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property: Provided, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not to exceed 30 days' notice by the disposal agency: And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate properly to protect the interests of the United States. Any negotiated lease or permit shall be subject to the applicable provisions of §§ 101-47.304-9 and 101-47.304-12, except that no explanatory statement to the appropriate committee of the Congress need be prepared with respect to a negotiated lease or permit providing for a net rental of \$1,000 or less per month, and termination by either party on 30 days' notice."

41 C.F.R. §§ 101-47.304-9 and 101-47.304.12 implement the provisions of section 203 of the FPAS dealing with negotiated disposals and explanatory statements, and are expressly made applicable to negotiated leases or permits for non-Federal interim use of surplus property. */ With respect to disposal by lease or permit, the regulations provide that no explanatory statement need be furnished where the monthly rental is \$1,000 or less and the lease or permit provides for termination on 30-days' notice by either party.

Section 203 of the FPAS and 41 C.F.R. 101-47.304-12 provide that no explanatory statement is required with respect to disposal of property having a fair market value of \$1,000 or less. This is somewhat different from the regulation for interim disposal by lease or permit, which speaks of "monthly rental." However, the regulations in question do not deal with disposal, and section 203 of the FPAS makes no reference to interim use,

*/ Section 203(e)(6) requires that an explanatory statement be sent to Congress with respect to negotiated disposals of property if the fair market value is over \$1,000.

leaving this subject for the discretion of the GSA Administrator. */ The legislative history of the disposal provisions is likewise silent on interim use. See, H.R. Rep. No. 85-1763, 85th Cong., 2d Sess. (1958).

The Administrator has provided the above-mentioned procedure for interim non-Federal use of surplus property pending disposal, which parallels section 203. Clearly, some negotiated interim leases and licenses for property in excess of \$1,000 fair market value could escape the congressional reporting requirement if the monthly rental were \$1,000 or less, but the FPAS nowhere requires such reporting. The Act leaves the interim care of surplus property to the GSA Administrator. We are unable to say that the scheme he has devised to implement this authority is unreasonable, particularly where property that might "lie fallow" pending final disposal could generate revenue for the Government pursuant to an interim lease or permit.

GSA regulations provide with respect to excess real property that:

"The holding agency may, with the approval of GSA, grant rights for non-Federal interim use of excess property reported to GSA, or portions thereof, when it is determined that such interim use is not required for the needs of any Federal agency." 41 C.F.R. 101-47.203-9.

The above-quoted authority contains none of the specific provisions of 41 C.F.R. 101-47.312 that limit interim use of surplus real property. However, the scheme of the FPMA suggests that interim use of excess real property is to be quite limited, since the regulations require GSA to screen all excess real property for possible use by other Federal agencies. If excess property has been screened and not been designated for use by a Federal agency, it will be designated surplus by GSA. 41 C.F.R. 101-47.204-1. At that point, interim use becomes subject to section 101-47.312, with its requirements as to compensation, duration and terms of use. Given the Administrator's broad authority to regulate the use of excess real property pursuant to section 202 of the FPAS, 40 U.S.C. 483, we cannot say that the regulation with respect to non-Federal interim use is impermissible. */

*/ 41 C.F.R. 101-47.312 specifically conditions a holding agency's authority to make interim use agreements on the requirement that " * * * the use and occupancy will not interfere with, delay or retard the disposal of the property. * * *" (Emphasis added.)

*/ See footnote next page.

Of course, if you find in your audit work that GSA could obtain greater revenues from interim use of excess or surplus property, or make more efficient use of such property, it might be appropriate to recommend a legislative change to the Congress. Likewise, if you believe that GSA should be reporting more interim use agreements to the Congress, a recommendation could be in order.

We hope the foregoing discussion will be of use to you.

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/ Section 202 provides in pertinent part that: " * * in order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies * * *." 40 U.S.C. 483(a)(1).

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General Services Administration (GSA) regulations on interim use of excess and surplus real property are proper exercise of GSA Administrator's authority under Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 at seq., to manage and dispose of Government property.