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United States Government Accountability Office  
Washington, DC 20548

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February 17, 2009

The Honorable Edolphus Towns  
Chairman  
Committee on Oversight and Government Reform  
House of Representatives

The Honorable Darrell Issa  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

*Subject: Federal Real Property: Authorities and Actions Regarding Enhanced Use Leases and Sale of Unneeded Real Property*

Many federal agencies hold real property that they do not need, including property that is underutilized or excess.<sup>1</sup> Such properties present significant potential risks to federal agencies because they are costly to maintain and could be put to more cost-beneficial uses or sold to generate revenue for the government. We first designated federal real property management as a high-risk area in January 2003 due to long-standing problems with underutilized and excess property, among other things.<sup>2</sup> After our high-risk designation, President George W. Bush added real property management to the President's Management Agenda and directed that the Federal Real Property Profile (FRPP) be established as a comprehensive database of real property under the control and custody of executive branch agencies, with agencies required to report on their real property assets each year.<sup>3</sup> The President also established a goal of disposing of \$15 billion in unneeded real property assets by 2015 to encourage agencies to right-size their portfolios by eliminating unneeded property.

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<sup>1</sup>Section 102 of Title 40 of the United States Code defines "excess property" as property under the control of a federal agency that the federal agency determines is not required to meet the agency's needs or responsibilities. The General Services Administration's Federal Management Regulation defines "not utilized property" as an entire property or portion of a property that is not occupied for current program purposes of the accountable agency or property that is occupied in caretaker status only. The regulation defines "underutilized property" as an entire property or portion of a property that is used only at irregular periods or intermittently by the accountable agency or property that is being used for the agency's current program purposes that can be satisfied with only a portion of the property (41 C.F.R. §§102-75.45 & 75.50).

<sup>2</sup>GAO, *High-Risk Series: An Update*, GAO-03-119 (Washington, D.C.: January 2003) and *High-Risk Series: An Update*, GAO-09-271 (Washington, D.C.: January 2009).

<sup>3</sup>Executive Order No. 13327, Feb. 4, 2004.

Some federal agencies have been granted authorities to enter into enhanced use leases (EUL)—typically long-term agreements with public and private entities for the use of federal property, resulting in cash and/or in-kind consideration for the agency—or to retain the proceeds from the sale of real property. Given the large number of unneeded properties being held by the federal government, you asked that we review how agencies are using their disposal authorities. Therefore, we addressed (1) what authorities the 10 largest real property holding agencies have to enter into EULs and retain proceeds from the sale of real property; (2) the extent to which agencies with authority to retain proceeds sold real property and how they have used the proceeds; and (3) the relationship, if any, between agencies having the authority to enter into EULs or retain sales proceeds and the amount of real property that they retained or sold.

To address these questions, we analyzed agencies' legal authorities related to EULs and the sale and retention of proceeds of real property; analyzed agency real property and FRPP data; and gathered, analyzed, and synthesized documentary and testimonial evidence of the 10 largest real property holding federal agencies (by value of real property). These 10 agencies include the Department of Agriculture (USDA), Department of Defense (DOD), Department of Energy (DOE), Department of the Interior (DOI), Department of Justice (DOJ), Department of State (State), Department of Veterans Affairs (VA), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), and the United States Postal Service (USPS). For the purposes of this review, the term "real property" does not include real property that DOD has or is planning to dispose of through the Base Realignment and Closure Act (BRAC) process,<sup>4</sup> lands managed by DOI or the Forest Service (except for Forest Service administrative sites), and transfers of individual properties specifically authorized by Congress. We also conducted site visits of real property that agencies have recently sold, exchanged, or were attempting to sell, and a property being leased under an EUL agreement and collected data from agencies on their real property sales during fiscal years 2006 and 2007. (See encl. I for additional information on our scope and methodology.)

We conducted our work in Arlington, Va.; Camp Verde, Ariz.; Colorado Springs, Colo.; Denver; Estes Park, Colo.; Glendale, Ariz.; Guilderland, N.Y.; Hillsborough, N.J.; Loveland, Colo.; Middle River, Md.; New York City; Peoria, Ariz.; Rotterdam, N.Y.; Scotia, N.Y.; Scottsdale, Ariz.; Sedona, Ariz.; Tucson, Ariz.; and Washington, D.C., from April 2008 through February 2009.

## **Results in Brief**

The 10 largest real property holding agencies have different authorities regarding EULs and retention of proceeds from the sale of real property. As of the end of fiscal year 2008,

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<sup>4</sup>Under the BRAC process, the Secretary of Defense is authorized to close certain military bases and dispose of property. In the scope of our review, we included real property disposed of by DOD through its authority to convey or lease existing property and facilities outside of the BRAC process.

- six agencies had both the authority to enter into EULs and sell and retain the proceeds from the sale of real property (DOD, GSA, State, USDA’s Forest Service, USPS, and VA);
- two agencies had EUL authority but no authority to retain proceeds from the sale of real property (DOE and NASA); and
- three agencies had no authority either to enter into EULs or retain proceeds from the sale of real property (USDA,<sup>5</sup> excluding the Forest Service; DOI;<sup>6</sup> and DOJ).

Authorities are agency-specific and include different provisions. For example, while VA is authorized to enter into EULs for “underutilized” or “unutilized” real property, DOD is authorized to enter into EULs only for “nonexcess” real property. In addition, while DOD, GSA, and VA have the authority to retain proceeds from the sale of real property, DOD (in some cases), GSA, and VA are required to follow several steps before possibly selling the property, including offering it to other federal agencies, eligible organizations that will use the property to assist the homeless, and other public benefit purposes. However, the Forest Service, State, and USPS sell real property and retain the proceeds without following these additional steps. Moreover, four agencies have the authority to retain proceeds from the sale of real property and use them without further congressional action (DOD in certain cases, the Forest Service, State,<sup>7</sup> and USPS) while further congressional action is required before two agencies (VA for nonEUL property<sup>8</sup> and GSA) may use the proceeds.

The six agencies with authority to retain proceeds reported selling property to varying extents and using proceeds primarily to help manage their real property portfolios. Governmentwide data reported to the FRPP were not sufficiently reliable to quantify the extent to which these agencies sold real property. As a result, we were unable to use the FRPP to analyze the number of sales of real property by agencies with the authority to retain proceeds. However, the six agencies we contacted that have authority to retain proceeds from the sale of real property provided data on their net proceeds from the sale of real property during fiscal years

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<sup>5</sup>Because USDA’s Agricultural Research Service (ARS) received pilot authority to enter into EULs for certain properties effective June 2008, but had not entered into any EULs during our review, we did not include ARS in the scope of our review.

<sup>6</sup>DOI has authorities that permit it to sell certain real property and retain the proceeds, but we did not include lands managed by DOI in our review.

<sup>7</sup>According to State, committee reports accompanying State’s appropriations acts routinely require the department to notify Congress through the reprogramming process of the specific planned use of the proceeds of the sale of excess property. Furthermore, State indicated that it routinely includes discussion of the use of proceeds from the sale of real property in its budget justifications and financial plans.

<sup>8</sup>VA has two authorities under which it can sell real property and retain the proceeds. Under the first authority, the Capital Asset Fund (CAF) at 38 U.S.C. § 8118, VA can sell real property subject to certain restrictions. The proceeds are deposited in the CAF which are subject to further congressional action. Under the second authority, VA can sell real property related to an EUL that is no longer needed by the department. When this property is sold, under 38 U.S.C. § 8165, the proceeds are deposited in the CAF which would require further congressional action. Alternatively, in its annual appropriations act, the Secretary of VA is authorized to deposit proceeds from EULs, including sale proceeds, into VA’s major or minor construction accounts, and use these proceeds for construction, alteration, and improvement projects. While congressional action is needed to pass VA’s annual appropriation acts, no further congressional action is needed for VA to spend these proceeds.

2006 and 2007, which ranged from \$21 million to \$541 million per agency. While some properties sold for tens of thousands of dollars, others sold for over \$200 million. Agencies generally reported using the sales proceeds to manage their real property portfolios, such as rental of space, building operations, new construction and acquisition, maintenance, and repairs and operations.

Agency officials generally said that the authorities to enter into EULs and sell real property and retain the proceeds influenced the amount of property that is kept and sold and that they preferred using the authorities that were the least restrictive. Because we were unable to quantify the number of properties that agencies sold during fiscal years 2006 and 2007, we asked agency officials about their views on the relationship between having the authorities to enter into EULs or retain sales proceeds and the amount of real property that they sell. Of the six agencies with the authority to retain proceeds from the sale of real property, officials at five agencies (the Forest Service, GSA, State, USPS, and VA) said that this authority is a strong incentive to sell real property, while officials at DOD said that the authority to retain proceeds is not a strong incentive to sell real property. Agencies with both authorities—to enter into EULs and retain proceeds from the sale of real property—prefer using the authority with the fewest restrictions. For example, VA indicated that EUL authority allows the agency to manage unneeded property because (1) VA may enter into EUL agreements without following steps required to sell real property, such as screening the property for use by the homeless, and (2) VA has the authority to retain and spend proceeds generated from EULs without the need for further congressional action. On the other hand, officials at USPS said that USPS has little incentive to enter into EULs and instead focuses on selling or exchanging property to maximize benefits to its real estate portfolio. The five agencies that do not have the authority to retain proceeds from the sale of real property (DOE; DOI; DOJ; NASA; and USDA except for the Forest Service), provided mixed responses about the extent to which such an authority would be an incentive to sell unneeded real property. While officials at all five agencies said that they would like to have such expanded authorities to help manage their real property portfolios, officials at two of those agencies said that due to challenges such as the security needs or remote locations of most of their properties, it was unlikely that they would sell many properties.

We requested comments on a draft of this report from the 10 real property holding agencies in our review and OMB. DOE, GSA, and DOI agreed with the information presented in the report. DOE, GSA, NASA, OMB, State, USDA, and VA provided technical clarifications, which we incorporated throughout the report as appropriate. The other agencies did not provide comments.

### **Agencies Have Different Authorities Regarding EULs and Retention of Proceeds from Sale of Real Property**

Separate legislation has provided agencies with their own statutory authorities regarding EULs and retaining proceeds from the sale of real property. The 10 largest real property holding agencies have different authorities for EULs and retention of proceeds from the sale of real property. As of the end of fiscal year 2008, eight agencies had the authority to enter into EULs (DOD, DOE, GSA, NASA, State, USDA's Forest Service, USPS, and VA) and six agencies (DOD, the Forest Service, GSA, State,

USPS, and VA) had the authority to sell and retain proceeds from the sale of real property. Six agencies had both authorities to enter into EULs and to retain proceeds from the sale of real property (DOD, GSA, State, USDA's Forest Service, USPS, and VA); two agencies had EUL authority but no authority to retain proceeds from the sale of real property (DOE and NASA); and three agencies had no authority to enter into EULs or retain proceeds from the sale of real property (USDA, excluding the Forest Service; DOI; and DOJ).<sup>9</sup> The authorities of these agencies are shown in table 1. For more information on agencies' legal authorities related to real property EULs, sales, and retention of proceeds, see enclosure II.

**Table 1: Agencies' Authorities Regarding EULs and Real Property Sales**

Agency	Authority to enter into EULs and retain leasing proceeds	Authority to use proceeds from EULs without further congressional action	Authority to sell real property and retain sales proceeds	Authority to use proceeds from sales without further congressional action
DOD	X	X	X	X <sup>a</sup>
DOE	X <sup>b</sup>			
GSA	X		X	
DOI <sup>c</sup>				
DOJ				
NASA	X	X		
State <sup>d</sup>	X	X	X	X <sup>e</sup>
<b>USDA (except the Agricultural Research Service<sup>f</sup> and the Forest Service)</b>				
<b>USDA (Forest Service)<sup>g</sup></b>	X <sup>h</sup>	X	X	X
USPS	X	X	X	X
VA	X	X	X	<sup>i</sup>

Source: GAO analysis and information provided by the above agencies.

Note: Authorities through fiscal year 2008.

<sup>a</sup>In certain cases, the use of proceeds from the sale of DOD real property is subject to further congressional action. See footnote 13.

<sup>b</sup>According to DOE, the department has determined that it has EUL authority on the basis of the definition set forth in OMB Circular A-11 (June 2008). DOE officials said that the department has not entered into any EULs using this authority.

<sup>c</sup>While DOI has certain authorities to sell real property, we did not include in the scope of our review lands managed by DOI.

<sup>d</sup>State has used its authority under 22 U.S.C. § 300 to exchange, lease, or license real property outside of the country. According to State, in exceptional cases, the department has relied on this authority to enter into long-term leases to conserve historically significant properties, such as the Talleyrand Building in Paris, France. State's authorization to sell and retain proceeds from the sale of real property applies to its properties located outside of the United States and to properties located within the United States acquired for an exchange with a specified foreign government.

<sup>e</sup>According to State, committee reports accompanying State's appropriations acts routinely require the department to notify Congress through the reprogramming process of the specific planned use of the proceeds of the sale of excess property. Furthermore, State indicated that it routinely includes discussion of the use of proceeds from the sale of real property in its budget justifications and financial plans.

<sup>f</sup>Because USDA's Agricultural Research Service received pilot authority to enter into EULs for certain properties effective June 2008, but had not entered into any EULs during our review, we did not include it in the scope of our review.

<sup>g</sup>Since these agencies lack disposal authority, GSA would dispose of these agencies' excess property and the proceeds from the disposal would be deposited into the U.S. Treasury.

<sup>a</sup>We are listing the Forest Service separately from USDA because it has authority to sell administrative property and retain the proceeds from the sales, unlike the rest of USDA.

<sup>b</sup>Although the Forest Service has EUL authority, it has not used that authority.

<sup>c</sup>Under certain circumstances, VA can use the proceeds from the sale of former EUL property without further congressional action. See footnote 8.

Authorities are agency-specific and include different provisions. For example, while VA is authorized to enter into EULs for “underutilized” or “unutilized” real property, DOD is authorized to enter into EULs only for “nonexcess” real property.<sup>10</sup> In addition, some agencies must follow the requirements in Title 40 of the United States Code and the McKinney-Vento Homeless Assistance Act before selling real property—and some of these steps may result in the property being disposed of with no proceeds—while other agencies’ authorities exempt them from following these requirements.<sup>11</sup> Congress enacted the McKinney-Vento Homeless Assistance Act as a comprehensive federal response to homelessness and enacted the public benefit conveyance (PBC) program as one means of disposing of surplus federal property, whereby state or local governments and certain tax-exempt nonprofit organizations can obtain surplus real property for public uses, such as public health or educational facilities and public parks and recreational areas. GSA and VA, for example, have the authority to retain proceeds from the sale of real property but must, before offering property for sale, follow the requirements under Title 40 of the United States Code and the McKinney-Vento Homeless Assistance Act. Although DOD also has authority to retain the proceeds from the sale of real property, in certain cases, the department is exempt from following the requirements under Title 40 relating to real property disposition and the McKinney Act.<sup>12</sup> Furthermore, four agencies with the authority to retain proceeds from the sale of real property (DOD, in certain cases;<sup>13</sup> the Forest Service; State; and USPS) have authority to use these proceeds

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<sup>10</sup>Land that DOD classifies as “underutilized” or “not utilized” may not necessarily be considered “excess property.” Pursuant to 40 U.S.C. §102, “excess property” is defined 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. Therefore, a parcel of DOD real property could potentially be underutilized, yet still not be excess, because it is required to meet certain DOD needs or responsibilities.

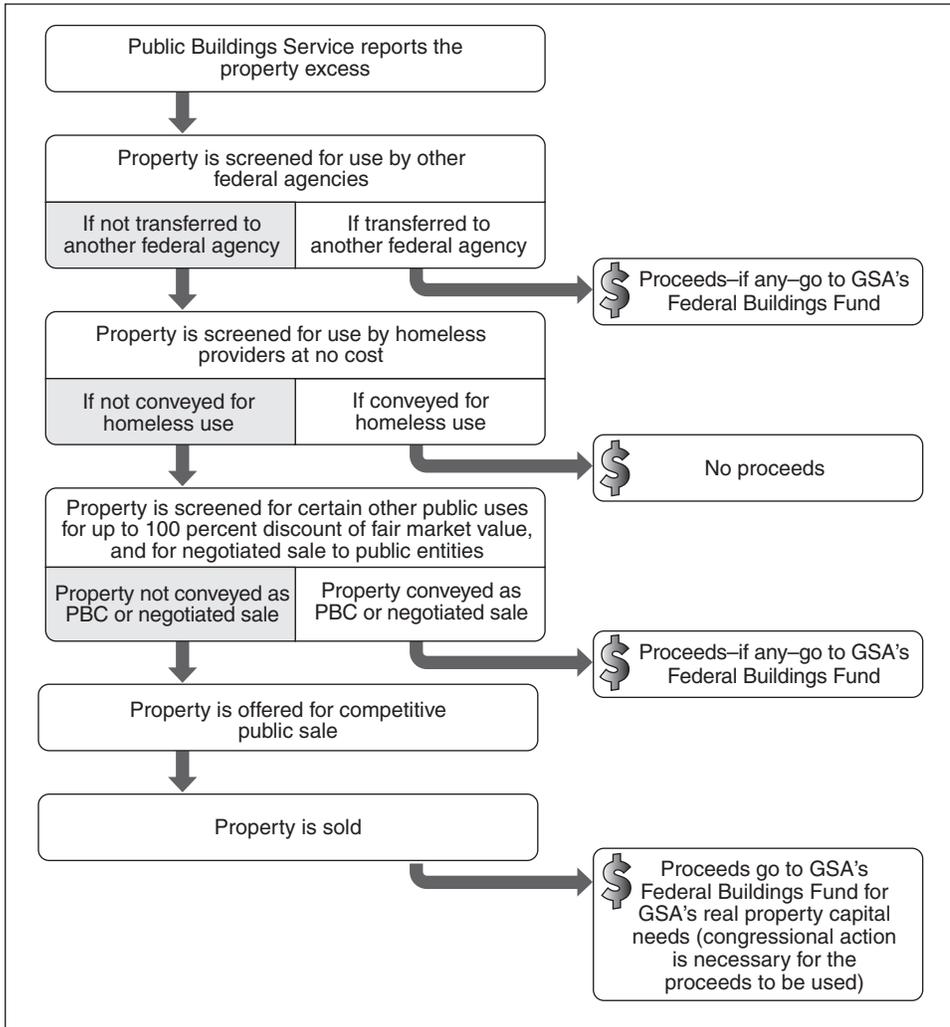
<sup>11</sup>Title 40 of the United States Code governs the disposal of most federal real property. When a federal agency no longer needs a property to carry out its mission responsibilities, the property is reported as excess and is offered to other federal agencies for use. If another federal agency does not have a need for the property, it is considered surplus to the federal government. Pursuant to the McKinney-Vento Homeless Assistance Act, the Department of Housing and Urban Development then reviews the property to determine if it is suitable for homeless use. If the property is considered suitable for homeless use, it is first made available for homeless use consideration at 100 percent discount of fair market value by state or local governments and certain tax-exempt nonprofit organizations for 60 days prior to any other public benefit uses. If the property is not considered suitable or if there is no interest in the property, it becomes available for other public benefit uses through the public benefit conveyance (PBC) program. In the PBC program, state or local governments and certain tax-exempt nonprofit organizations can obtain the property for an approved public benefit use, such as education or parks and recreation. Properties can be conveyed to grantees at a discount of up to 100 percent of fair market value.

<sup>12</sup>10 U.S.C. §§ 2854a and 2878.

<sup>13</sup>DOD has several different authorities to retain proceeds from the sale of real property. Under 40 U.S.C. § 572, the Administrator of GSA is authorized to dispose of property under the control of a military department that is not subject to closure and is excess to the department’s needs. Proceeds from the sale are deposited into a special account in the Treasury for DOD and, since fiscal year 2005, are available for expenditure without being subject to further congressional action. Also under 10 U.S.C. § 2854a, DOD is authorized to convey damaged or deteriorated military family housing and to

without further congressional action, while two agencies with authority to retain proceeds from the sale of real property, (VA for nonEUL property and GSA) require further congressional action before using them. Figure 1 shows the steps that GSA must follow to sell excess real property and retain the proceeds. (Encl. III illustrates the steps each agency must follow to sell real property.)

**Figure 1: GSA’s Process for Selling Excess GSA-Controlled Real Property**



Source: GSA.

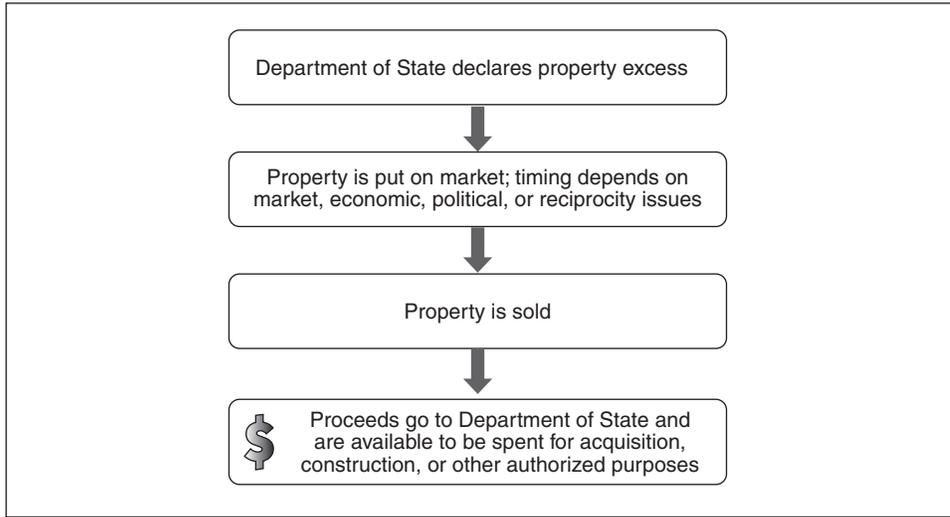
By contrast, the Forest Service, State, and USPS do not follow the requirements<sup>14</sup> under Title 40 of the United States Code and the McKinney-Vento Homeless Assistance Act when they wish to sell real property, both reducing the time and effort involved and eliminating instances in which the agency disposes of the property at a

retain the proceeds for use without further congressional action. Under 10 U.S.C. § 2878, the Secretary is authorized to convey property or facilities for the military housing privatization initiative and the use of the proceeds is subject to further congressional action.

<sup>14</sup>Under 40 U.S.C. § 113(e)(7), State is exempt from following Title 40 requirements regarding the sale of excess real property. Furthermore, because State’s properties are located outside of the United States, the McKinney-Vento Homeless Assistance Act does not apply. USPS’s own authorities also exempt USPS from these requirements. The Forest Service interprets its authority to convey administrative sites under 16 U.S.C. § 580d note to exempt it from the requirements under Title 40 of the United States Code and the McKinney-Vento Homeless Assistance Act.

discount of up to 100 percent of fair market value. For example, figure 2 shows the steps that State must follow to sell overseas real property.

**Figure 2: State Department’s Process for Selling Excess Real Property Located Outside of the United States**



Source: State Department.

How these proceeds can be spent also varies, as described fully in enclosure II. Table 2 provides a summary of the steps that agencies must follow when selling real property and retaining proceeds.

**Table 2: Summary of Major Steps that Agencies Follow to Sell Real Property**

Agency	Property declared excess	Screened for use by other agencies	Screened for use by homeless	Screened for public benefit use
DOD <sup>a</sup>	Yes	Yes	Yes	Yes
DOD <sup>b,c</sup>	No	No	No	No
GSA	Yes	Yes	Yes	Yes
State	Yes	No	No	No
USDA/Forest Service (for administrative sites)	No	No	No	No
USPS	Yes	No	No	No
VA	Yes	Yes	Yes	Yes

Source: GAO analysis; information provided by the above agencies.

Note: The agencies listed in this table are only those with the authority to retain proceeds from the sale of real property. See enclosure II for the specific authorities provided in this table.

<sup>a</sup>40 U.S.C. § 572. Under this authority, while the Administrator of GSA is authorized to dispose of DOD property, DOD is the recipient of the proceeds.

<sup>b</sup>10 U.S.C. § 2854a.

<sup>c</sup>10 U.S.C. § 2878.

## **Agencies with Authority to Retain Proceeds from Sale of Real Property Reported Selling Property to Varying Extents and Using Proceeds for Property Management**

Governmentwide data reported to the FRPP were not sufficiently reliable to analyze the extent to which the six agencies with authority to retain proceeds sold real property, due to inconsistent and unreliable reporting. However, these six agencies (DOD, the Forest Service, GSA, State, USPS, and VA) reported selling property to varying extents, with net proceeds ranging from \$21 million to \$541 million during fiscal years 2006 and 2007. In addition, five agencies (DOD, GSA, State, the Forest Service, and VA) reported using sales proceeds to manage their real property portfolios, such as rental of space, building operations, new construction and acquisition, maintenance, and repairs and alterations, while USPS reported depositing the proceeds into its general fund.

### FRPP Data on Real Property Disposal Were Unreliable

According to GSA officials, a data element on disposition (which includes disposition by sale as well as other methods) was added to the FRPP as of fiscal year 2006 to identify unneeded assets that have been removed from the FRPP inventory and to track the volume of disposals to support the strategic goal of right-sizing the federal real property inventory. However, we found inconsistent and unreliable reporting within the disposal data element on the method of disposal and were therefore unable to use the FRPP to analyze the number of sales of real property by agencies with the authority to retain proceeds. For example, the Air Force reported that in fiscal year 2006, it disposed of 4,397 assets by sale, as well as disposing of a number of assets by demolition, federal transfer, or other means. In fiscal year 2007, however, it reported disposing of 12,423 assets, all in the “other” category.<sup>15</sup> Because all of its disposed assets were reported in the “other” category for fiscal year 2007, unlike in the prior fiscal year, we asked Air Force officials about the reasonableness of the data. Air Force officials agreed that the disposal method data summarized and reported in 2007 did not provide disposal information comparable to the level of detail provided in 2006. They said that the primary cause for insufficient data detail has been resolved and that they plan to provide better data in future reporting that more accurately reflects disposal methods.

GSA officials said that every time a new data element is added to the FRPP, the data for that element are likely to be less reliable because agencies need to learn the process and determine how to provide these data. GSA reviews the data submitted by federal agencies and notifies the relevant agencies of any inconsistencies and anomalies. If an agency does not address the inconsistencies or anomalies, GSA will report these to OMB; OMB takes these into account when rating the agencies on their real property management initiative efforts. Nevertheless, these data weaknesses reduce the effectiveness of the FRPP as a tool to enable governmentwide comparisons of real property efforts, such as the effort to reduce the government’s portfolio of unneeded property.

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<sup>15</sup>FRPP data are requested by constructed asset, and one “property” may include many constructed assets.

Agencies with Authority to Retain Proceeds Reported Selling Real Property to Varying Extent

While we were unable to analyze the governmentwide FRPP database to determine the number of properties sold by agencies with authority to retain proceeds,<sup>16</sup> we asked the six agencies that have authority to retain proceeds from the sale of real property to provide information on the net proceeds received during fiscal years 2006 and 2007. As shown in Table 3, the sales proceeds received by individual agencies in our review ranged from \$21 million to \$541 million during those 2 years. The highest level of net proceeds for these 2 years was reported by State, largely due to the sale of a facility known as the Navy Annex in London for \$494 million.

**Table 3: Real Property Sales Proceeds during Fiscal Year 2006 and Fiscal Year 2007, by Agency**

Agency	FY 2006 proceeds	FY 2007 proceeds	FY 2006 and FY 2007 total proceeds
DOD	\$14,070,949	\$41,787,312	\$55,858,261
GSA	52,049,163	82,218,326	134,267,489
State	36,035,010	505,145,944	541,180,954
USDA-Forest Service	12,600,000	8,700,000	21,300,000
USPS	91,367,745	201,753,000	293,120,745
VA <sup>a</sup>	22,319,702	0	22,319,702

Sources: DOD, GSA, State, USDA, USPS, and VA.

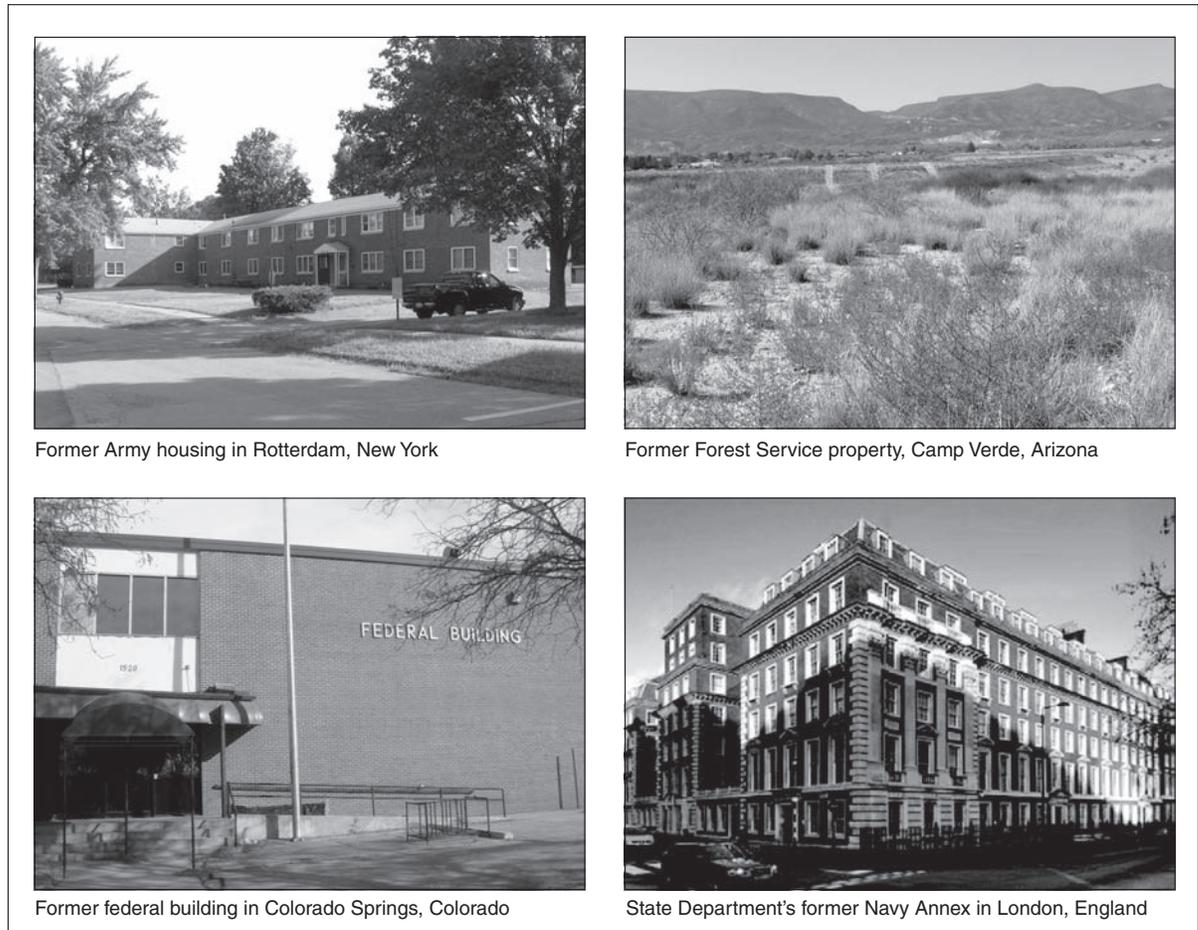
<sup>a</sup>VA reported that it did not sell any properties through its Capital Asset Fund authority, which authorizes it to sell real property and retain the proceeds, but that it sold one property, shown in this table. The property, the Lakeside VA Medical Center in Chicago, was sold under an EUL agreement after determining that it was no longer needed by the agency. VA's proceeds from the sale of the Lakeside VA Medical Center were \$50 million, which included a net present value rental return of \$28 million received in 2005 for a 75-year EUL term and an additional \$22 million received in 2006, reflected in this table, with the actual closing of the sale of the property.

Of the six agencies with the authority to sell real property and retain the proceeds, two (State and USPS) use in-house staff to handle the sales, while the other three agencies use GSA for some or all of their sales. Under the Federal Management Regulation, landholding agencies must report excess real property to GSA, which is generally responsible for disposing of real property unless an agency has specific or delegated authority to do so.<sup>17</sup> Property sales handled by GSA are typically sold through auctions. We found that agencies with the authority to retain proceeds from the sale of real property had sold a variety of types of properties in the past several years (see fig. 3).

<sup>16</sup>Although we asked the agencies to provide data on the number of properties sold during fiscal years 2006 and 2007, we are not reporting them because the methods that the agencies used to count the number of properties were not comparable.

<sup>17</sup>41 C.F.R. § 102-75.115.

**Figure 3: Examples of Recently Sold Properties by Agencies with Authority to Retain Proceeds**



Former Army housing in Rotterdam, New York

Former Forest Service property, Camp Verde, Arizona

Former federal building in Colorado Springs, Colorado

State Department's former Navy Annex in London, England

Sources : GAO (Army Rotterdam housing, Forest Service Camp Verde, and Colorado Springs federal building); Department of State (London Navy Annex).

The sales prices for these recently sold properties varied considerably. While some properties sold for tens of thousands of dollars, one sold for nearly \$500 million. Information provided by agency officials on the above properties included the following:

- State's London, England, Navy Annex building sold in 2007 for \$494 million, when the London real estate market was at its peak. State Department officials said the sale of this building, which was owned by State but previously used by the Navy, was unique because the sales proceeds from the Navy Annex will be used to build a new embassy in London, rather than used to fund worldwide priorities. State officials provided information on two other examples of sales that they said were more typical, involving the sales of former marine security guard quarters in Cape Town, South Africa, and Quito, Ecuador, in 2008, for \$1.1 million and \$1.8 million, respectively. The proceeds from those sales were deposited into the department's asset management account to be used for worldwide priorities.
- The Army sold a former Army housing complex in Rotterdam, N.Y., for \$1.8 million in 2008. The Army determined this property was excess because it had more housing in the area than it needed to serve its mission. The property,

which included several apartment and other buildings on about 8 acres of land, was sold through GSA's online auction for slightly over its appraised value.

- The Forest Service sold two of four parcels of administrative land it offered for sale through GSA's online auction at Camp Verde, Ariz. The first parcel consisted of about 1.6 acres of unimproved land in a residential neighborhood that was sold to private citizens in 2006 for \$155,000. The second parcel consisted of about 119 acres of mostly unimproved land that was sold to the town of Camp Verde in 2008 for \$2.4 million. The other two parcels did not sell—a fact that Forest Service officials attributed to a downturn in the real estate market.
- GSA sold a federal building in Colorado Springs, Colo., for \$890,000 in 2009. The property consisted of about 1.7 acres of land and a 2-story brick office building built in 1962. Formerly leased to the Air Force, the building had been vacant since December 2007. The property was sold through GSA's online auction.

### Agencies Reported Using Sales Proceeds Mainly for Real Property Portfolio Management Purposes

Agencies reported using sale proceeds mainly to help manage their real property portfolios. (Encl. II states how agencies are authorized to use proceeds.) For example, a Forest Service official said that the Forest Service used the proceeds from the Camp Verde sale described above to build a new ranger station at Camp Verde. GSA indicated that its sales proceeds are deposited into GSA's Federal Buildings Fund and used for real property management purposes, such as rental of space, building operations, new construction and acquisition, and repairs and alterations. State Department officials said that the proceeds are collected centrally and used for priorities established by the department's Bureau of Overseas Buildings Operations, including purchasing housing and other properties, constructing new facilities, or rehabilitating existing facilities. USPS officials said that the agency deposits its proceeds from the sale of real property into its general fund, where they become part of USPS's funds for use for agency priorities.

### **Authorities Affect How Agencies Manage Their Real Property Portfolio**

Agency officials generally said that the authorities to enter into EULs and sell and retain sales proceeds influenced the amount of property that is sold and that they preferred using the authorities that were the least restrictive. The five agencies that do not have the authority to retain proceeds from the sale of real property (DOE; DOI; DOJ; NASA; and USDA, except for the Forest Service), indicated that they would favor having this authority to help manage their real property.

### Agencies with Authority for Both EUL and Retention of Sales Proceeds Preferred the Authority Seen as Less Restrictive or More Advantageous

We asked agency officials for their views on the relationship between having the authorities to enter into EULs or to sell real property and retain the sales proceeds and the amount of real property that they sell. Of the six agencies with the authority to retain the proceeds from the sale of real property, officials at five agencies (the

Forest Service, GSA, State, USPS, and VA) said that this authority is a strong incentive to sell real property, while officials at one agency, DOD, which had the authority to enter into EULs without offering the properties to the homeless and other federal agencies—said that the authority to retain proceeds is not a strong incentive to sell real property. Officials from five agencies that had authorities to enter into EULs and to retain the proceeds from the sale of real property—GSA, DOD, USDA’s Forest Service, USPS, and VA—all stated preferences for the authority seen as less restrictive or more financially advantageous to the agency.<sup>18</sup> State, which also has the authority to enter into EULs and retain the proceeds from the sale of real property, indicated that retaining sales proceeds is the more critical part of its program, but also foresees increasing opportunities for EULs in the future.

DOD and VA officials said that because EULs provide greater incentives, the agencies place greater emphasis on entering into EULs, compared to real property sales. DOD officials emphasized the potential of EULs to serve the department’s mission, while stating that its authority to retain proceeds from the sale of real property was not a strong incentive to sell unneeded real property. For example, headquarters DOD officials said that there was little emphasis or potential at DOD for selling excess real property outside of the BRAC process, in part because that process was the department’s major initiative to consolidate its real property and had largely taken care of the opportunity to dispose of DOD real property. Disincentives to selling real property, according to DOD officials, include the length of time it can take, since such property must first be offered to other federal agencies, the homeless, and other public benefit uses, and the fact that much DOD property cannot be sold to a private entity for security reasons.

In contrast, DOD officials emphasized the potential for EULs to maximize the utility and value of its real property and to serve its mission needs, and each service has a Web site focused on its existing and proposed EULs. In prior work, we found that EULs are a land use planning tool for DOD that Army and Air Force are using to gain in-kind services.<sup>19</sup> DOD is authorized to enter into EULs only for nonexcess property, and officials made the distinction between DOD’s authority to enter into EULs for nonexcess property and its authority to sell and retain proceeds from the sale of excess real property. However, it was not always clear how DOD determined whether properties were suitable for EULs. For example, Army officials said that the Army considers EULs for properties it would not consider excess because the property creates a buffer zone or security perimeter for an installation. However, the Army entered into a long-term EUL agreement for a mixed-used development of hotel and retail space at Redstone Arsenal, Ala., on Army property that lies outside of the

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<sup>18</sup>In a 2003 report, we found that outleasing historic properties under the National Historic Preservation Act, 16 U.S.C. § 470h-3, promotes certain benefits such as the restoration of historic buildings, but that it is unclear whether selling such properties would accomplish the same purpose with greater economic benefit to the taxpayer. See GAO, *Budget Issues: Alternative Approaches to Finance Federal Capital*, GAO-03-1011 (Washington, D.C.: Aug. 21, 2003). At times, these outleases, like some EULs, have been long-term leases for commercial development. For example, in Washington, D.C., GSA leased the U.S. Tariff Building, which had been vacant for a number of years, to the Kimpton Hotel and Restaurant Group, Inc. for 60 years. This group restored the building, converting it into a luxury hotel.

<sup>19</sup>GAO, *Defense Infrastructure: Services’ Use of Land Use Planning Authorities*, GAO-08-850 (Washington, D.C.: July 23, 2008).

installation's fence and gate. Army officials said that they see the use as compatible with a buffer zone and wanted to maintain some control over the property because a training site is nearby.

Similarly, Air Force officials said that unutilized property may be nonexcess but suitable for an EUL because it is needed for a buffer zone or to avoid encroachment. However, it has proposed a long-term EUL agreement for a hotel/resort development at Emerald Breeze, on 17 acres of Air Force property on an island off the coast of Florida that is not directly adjacent to an installation. Air Force officials said that every EUL agreement states that the lease can be terminated at any time for a national emergency. This allows the Air Force more flexibility than excessing and selling the property, at which point it would lose the right to reacquire it during a national emergency. In addition, an Air Force official said that under the terms of excessing real property, no property is declared excess until a determination has been made that it is excess. Therefore, until that determination is made, the Air Force does not consider that property excess, and it may consider an EUL for that property.

According to VA officials, VA places greater emphasis on entering into EULs, compared to real property sales, in part because VA can enter into EULs with fewer restrictions than under its Capital Asset Fund (CAF) authority to sell and retain proceeds of real property.<sup>20</sup> For example, VA can enter into an EUL without first screening the property for homeless use, as it must for property it wishes to sell under its CAF authority. Moreover, VA has the authority to retain and spend proceeds from EULs without the need for further congressional action, while proceeds retained under CAF authority are subject to further congressional action.<sup>21</sup> In addition, VA is authorized to use EUL proceeds for purposes unrelated to real property, such as providing health care services, which are not permitted under VA's CAF authority. VA officials said that in addition, EULs allow VA to realign its asset portfolio in a way that supports its mission by using EULs to obtain facilities, services, in-kind consideration, or revenue for VA requirements that would otherwise be unavailable or unaffordable. The officials added that local and state government, veterans groups, private partners, and nonprofit entities and other community members potentially benefit when these properties are redeveloped to provide new services and economic opportunities to veterans and the community. VA produces an annual report that discusses and tracks the benefits of its active EULs for the past fiscal year.

VA officials said that although they believe retaining proceeds from the sale of real property is a strong incentive, other factors, such as the needs of veterans' service organizations and the community that are complimentary to VA's mission, are of

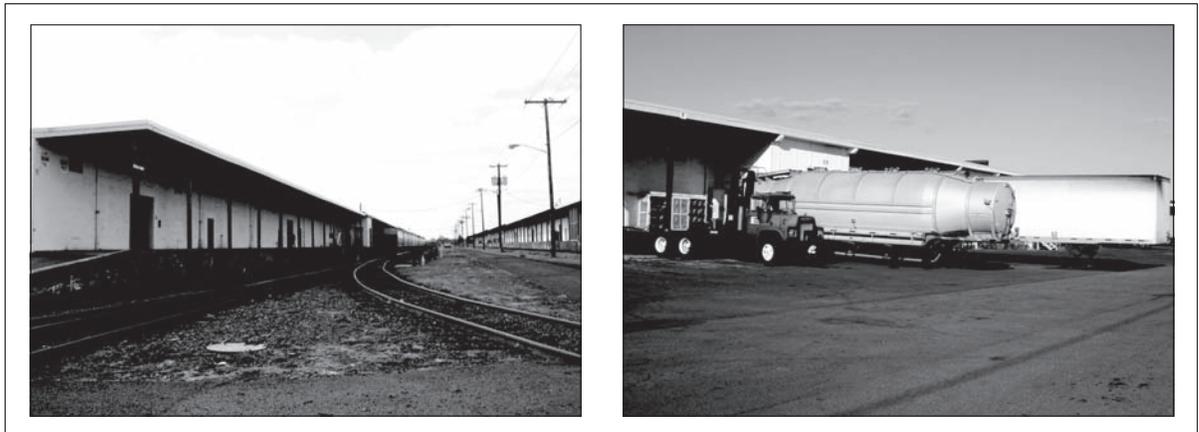
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<sup>20</sup>VA's CAF authority at 38 U.S.C. §8118 established a revolving fund and granted the Secretary the authority to transfer, sell, or exchange real property and deposit funds into the CAF. CAF funds may be used for property transfer costs, minor medical construction projects, or historic VA properties.

<sup>21</sup>Under 38 U.S.C. §8165, VA is authorized to spend EUL proceeds without further congressional action for EUL expenses and veterans' health care services. Additionally, in its annual appropriations act, the Secretary of VA is authorized to deposit EUL proceeds into VA's major or minor construction accounts, and use them for construction, alteration, and improvement projects. While congressional action is needed to pass VA's annual appropriation acts, no further congressional action is needed for VA to spend these proceeds.

equal importance. This review and past work found that VA has used authorities, such as EULs, to provide services for veterans, such as homeless housing, drug rehabilitation, and childcare, and to generate revenue. For example, in 2006, at Fort Howard, Md., VA entered into an EUL to use nearly 300,000 square feet of vacant space to develop a retirement community, with priority placement for veterans. Conversely, in another EUL, VA is leasing property in Hillsborough, N.J., called Veterans Industrial Park to a company that subleases the property to a variety of commercial interests needing warehouse or light manufacturing space, as well as the county government. VA officials said that VA did not consider selling this property because, in 1999, when the agency entered into the EUL agreement, it did not have the authority to retain the proceeds from the sale of real property. In addition, GSA had a similar property nearby that the agency had been unable to sell. Other than a small area on the property that is used for VA services to collect and distribute military clothing to homeless veterans, the property lessees are commercial renters who are not providing any direct services to VA. However, VA officials said that it considers such EULs to be in the agency's interest, as VA is receiving about \$300,000 to \$390,000 a year from rental income that it can use for the agency's priorities.<sup>22</sup> (See fig. 4 for photographs of this property.)

**Figure 4: Veterans Industrial Park, Which Is Generating Lease Payments to VA**



Source: GAO.

GSA stated that while it has the authority to enter into EULs and sell and retain the proceeds from real property sales, it believes that budget scorekeeping rules under OMB Circular A-11 limit the agency's ability to maximize usage of its EUL authority. In contrast, GSA officials said that the agency's ability to retain proceeds is a strong incentive to dispose of excess real property.<sup>23</sup> From fiscal years 2002 to 2007, it reported 271 assets as excess, helping to avoid more than \$600 million of repair and alterations liability and providing GSA with almost \$140 million of proceeds, which GSA uses as reinvestment funds for its portfolio of core assets. GSA officials said that it is unlikely that sales proceeds have been seen as an offset to the following year's appropriation. According to GSA officials, the agency's sale of a 1.9 million

<sup>22</sup>According to VA officials, VA also has a profit participation agreement for the EUL based on the lessee's net income. In 2007, VA received proceeds from the profit participation for the first time in the amount of about \$32,000.

<sup>23</sup>GSA received permanent authority to sell and retain the net proceeds from real property sales in fiscal year 2005. Section 412 of P.L. No. 108-447, 118 Stat. 2809, 3259 (2004).

square-foot facility known as the Middle River Depot in Baltimore County, Md., is a good illustration of how retention of proceeds can motivate GSA to dispose of excess real property and obtain the best value for the government from its real property sales.

The Middle River Depot, a large warehouse used to build B-26 bombers in World War II, with some associated buildings and land, sold for \$37.5 million in 2006. In this case, GSA decided there was no government need for the property, and Congress passed legislation in 2004 for GSA to sell this property and keep the proceeds.<sup>24</sup> The main challenges in marketing and selling the property were community concerns and the state's insistence that the warehouse be covered by a historic easement.<sup>25</sup> GSA officials said that GSA expended considerable time and effort into overcoming these challenges, such as negotiating with the Maryland Historical Trust until it came to an understanding of the basic alterations that would and would not be permitted to the building. GSA subsequently provided this information to prospective bidders. GSA officials said that the agency was motivated to sell the property at the highest possible price because GSA was authorized to retain the proceeds (see fig. 5).

**Figure 5: Middle River Depot, Md., Sold by GSA in 2006**



Source: GAO.

Officials at USPS, which has authority to enter into EULs and sell real property and retain proceeds, said that the Postal Service prefers to sell or exchange unneeded property. Officials said that USPS's authority provides the agency with a strong incentive to actively sell or exchange underutilized property that has a high value. Because of the relatively streamlined process to sell real property, compared to other agencies, and its ability to retain and use sales proceeds for any USPS purpose without further congressional action, it has little incentive to enter into EULs and rarely does so. Three former USPS properties that were sold or exchanged in the past few years were initiated by other parties wanting to purchase the building or land. For example, the state of New York approached USPS in the 1990s about purchasing the Farley Building in Manhattan, a historic, 1.4 million-square-foot

<sup>24</sup>Section 407 of P.L. No. 108-447, 118 Stat. 2809, 3258 (2004). Although we excluded from our legal research transfers of individual properties authorized by Congress, we visited this property upon GSA's recommendation.

<sup>25</sup>Under a historic easement, the future owner would have to obtain approval from the Maryland Historical Trust for any changes to the interior or exterior of the building.

building across the street from Pennsylvania Station (see fig. 6) to redevelop the building into a new train station to be named the Moynihan Station. USPS sold the Farley Building in 2007 and is in the process of consolidating its operations into two other existing buildings and 250,000 square feet of leaseback space in the Farley building. According to USPS officials, the sale of the Farley building generated financial proceeds to USPS,<sup>26</sup> reduced deferred maintenance costs, consolidated USPS operations into less space overall, and resulted in reduced operating costs. In the other two cases, in Denver and Scottsdale, Ariz., USPS exchanged old post offices with various parties (the city of Denver and a health care company) that sought the postal property and financed new post offices. In both cases, according to USPS's analysis, USPS benefited financially from the transaction, as well as gaining modern and more efficient facilities in return for older ones.

**Figure 6: Farley Building in New York City, Sold by USPS in 2007**



Source: GAO.

State Department officials also told us that the authority to retain proceeds is an incentive to dispose of excess real property because it allows the agency to direct resources from the sale of real property to other pressing facilities needs. Although further congressional action is not needed before State may use proceeds from the sales of real property, the department notifies Congress about its intended use of the proceeds in its budget justifications and financial plans.

Officials at the Forest Service, which has authorities to enter into EULs and retain proceeds from the sale of real property, said that the agency's authority to retain proceeds is a strong incentive to sell real property. Officials at this agency described active efforts to analyze their portfolios to find opportunities to sell unneeded real property. Forest Service officials said that since it received authority to retain proceeds in 2001, it has disposed of more properties than before it had the authority.<sup>27</sup> The Forest Service officials said that the agency has benefited in two primary ways

<sup>26</sup> A USPS official said that the Postal Service originally agreed to sell the Farley building for \$230 million, including \$55 million in a deferred purchase price that will not be paid until the commercial component of the development is built. The official said that as of January 2009, USPS has received \$195 million, which is \$20 million more than was expected because of inflation and other factors.

<sup>27</sup> In 2001, the Forest Service received authority for a pilot program to convey excess Forest Service administrative structures and to retain the proceeds from those sales. This 2001 authority was replaced with its current authority in 2005.

from this authority. First, the Forest Service has used proceeds to help address a large backlog of deferred maintenance needs. Second, because it may use proceeds to construct new ranger stations, they said this authority has helped the Forest Service realign its infrastructure to better meet its current mission. Forest Service officials said that a major reason that the authority to keep the proceeds has functioned as an incentive is that the Forest Service's policy is to use proceeds for local or regional priorities where the property is sold. A Forest Service site in Sedona, Ariz., illustrates these benefits. The Forest Service sold a property that had been used as a ranger station, along with some related buildings and land, for \$8.4 million to build a new ranger station on another site (see fig. 7). The previous Forest Service ranger station had significant deferred maintenance needs and was on a side street with little traffic in the town of Sedona. According to a Forest Service official, since the new ranger station opened along the main highway to Sedona in April 2008, average monthly visits by the public to the ranger station have increased significantly.

**Figure 7: New Forest Service Ranger Station in Sedona, Ariz., Funded by Sale of Another Property**



Source: GAO.

The Forest Service has also sold properties with lower real estate values, including one in Estes Park, Colo., that was sold in August 2008 for \$440,000. According to a Forest Service official, the Forest Service no longer ran an office out of Estes Park and did not need the property. In addition, the property had significant maintenance needs. Forest Service officials said that the biggest challenge regarding the sale of this property was the downturn in the housing market, and that the agency faces a similar challenge in selling many other properties under such economic conditions. Even so, the Forest Service considers the disposition a success because it no longer has to maintain this unneeded property and plans to use the proceeds for high-priority deferred maintenance needs.

#### Agencies without Authority to Retain Proceeds from Real Property Sales Provided Mixed Responses on Whether Such Authority Would Be a Strong Incentive

Officials at the five agencies we contacted that do not have the authority to retain proceeds from the sale of real property (DOE; DOI; DOJ; NASA; and USDA, except for the Forest Service) provided mixed responses when asked about the extent to which such an authority would be an incentive to sell more real property. Officials at the five agencies said their agencies would like to have expanded authorities with

which to manage their real property portfolio, including the authority to enter into EULs and retain the proceeds from the sale of real property. However, officials at two of those agencies said that due to challenges such as the security needs or remote locations of most of their properties, it was unlikely there would be a significant number of real properties that were appropriate to sell.

One challenge that agencies face in disposing of real properties is maintaining them until they can be sold. We visited a former USDA Agricultural Research Service laboratory in Phoenix that was for sale. The laboratory was vacated in January 2006 when the staff moved to another location. During our visit, we observed that property had been vandalized and copper from the buildings and part of a greenhouse had been stolen. While GSA is marketing and attempting to sell the property, USDA remains responsible for maintaining it until May 1, 2009, before responsibility is transferred to GSA under certain conditions.

**Figure 8: Former USDA Laboratory for Sale in Phoenix**



Source: GAO.

Agencies may also face challenges in exercising their EUL authority. NASA, one agency that does not have the authority to retain proceeds from the sale of real property, has had the authority to enter into EULs at two centers; as of December 31, 2008, a new agencywide authority gives NASA the ability to enter into EULs. In recent work, we found that while NASA has realized some EUL-related financial benefits, among other things—most of which would not have been realized by NASA without this authority—the agency did not have adequate controls in place to ensure accountability and transparency and to protect the government.<sup>28</sup> NASA accepted our recommendations and developed agencywide policy for the administration of EULs and for the financial management of the revenue derived from EULs.<sup>29</sup> NASA officials said that they use EULs, rather than selling the property, when the agency believes

<sup>28</sup>GAO, *NASA: Enhanced Use Leasing Program Needs Additional Controls*, GAO-07-306R (Washington, D.C.: Mar. 1, 2007).

<sup>29</sup>NASA indicated that the initial agencywide administrative policy, which was published in July 2007, has since been updated to reflect the legislation and changes to NASA's EUL authority. According to NASA, the most recent update was sent to all NASA centers in December 2008 and the agency's Office of the Chief Financial Officer sent out financial policy for EUL revenue in May 2008. NASA indicated that these actions were taken to address the concerns expressed in the GAO review and have ensured accountability and transparency and protection for the government.

the property may be needed in the future or wants to maintain some control over the property.

### **Agency Comments and Our Evaluation**

We requested comments on a draft of this report from the Administrator of the General Services Administration; the Administrator of the National Aeronautics and Space Administration; the Attorney General; the Director of the Office of Management and Budget; the Postmaster and Chief Executive Officer of the United States Postal Service; the Secretary of Agriculture; the Secretary of Defense; the Secretary of Energy; the Secretary of the Interior; the Secretary of State; and the Secretary of Veterans Affairs.

DOE indicated that it agreed with the report's findings and noted that it is important to emphasize that the EUL authority provided to the department under the "Hall Amendment," 42 U.S.C. § 7256(c) is very limited in scope. DOE also indicated that it would greatly benefit from a more expansive and broad EUL authority, similar to the authorities used by DOD. In addition, DOE indicated that, with the increased emphasis on renewable energy as contained in the Energy Policy Act of 2005, legislation that provides expanded authorities to the department would provide the flexibility and tools with which to achieve the goals that are vital to the nation. GSA indicated that it agreed with the report's findings. DOI indicated that the report was a fair summation of the authorities, policies and complex challenges associated with the disposal and transfer of lands and constructed assets. DOE, GSA, NASA, OMB, State, USDA, and VA provided technical clarifications, which we incorporated throughout the report as appropriate. DOD, DOJ, and USPS provided no comments.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees; the Administrator of the General Services Administration; the Administrator of the National Aeronautics and Space Administration; the Attorney General; the Director of the Office of Management and Budget; the Postmaster and Chief Executive Officer of the United States Postal Service; the Secretary of Agriculture; the Secretary of Defense; the Secretary of Energy; the Secretary of the Interior; the Secretary of State; and the Secretary of Veterans Affairs.

In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions regarding this report, please contact me at (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure IV.

A handwritten signature in black ink that reads "David J. Wise". The signature is written in a cursive, flowing style.

David Wise  
Director, Physical Infrastructure Issues

Enclosures (4)

## Enclosure I: Scope and Methodology

Our objective was to review how agencies are using their disposal authorities. To accomplish this, we addressed (1) what authorities the 10 largest real property holding agencies have to enter into enhanced use leases (EUL) or retain proceeds from the sale of real property; (2) the extent to which agencies with authority to retain proceeds sold real property and how they have used the proceeds; and (3) the relationship, if any, between agencies having the authority to enter into EULs or retain sales proceeds and the amount of real property that they retained or sold.

To determine what authorities the 10 largest real property holding agencies have regarding EULs and retention of proceeds from the sale of real property, we first identified the 10 agencies that reported holding real property with the highest values to the Federal Real Property Profile (FRPP) in fiscal year 2007. These 10 agencies include the Department of Agriculture (USDA), Department of Defense (DOD), Department of Energy (DOE), Department of the Interior (DOI), Department of Justice (DOJ), Department of State (State), Department of Veterans Affairs (VA), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), and the United States Postal Service (USPS). For the purposes of this review, the term “real property” does not include real property that DOD has or is planning to dispose of through the Base Realignment and Closure Act (BRAC) process,<sup>30</sup> lands managed by DOI or the Forest Service (except for Forest Service administrative sites), and transfers of individual properties specifically authorized by Congress. We then conducted legal research and interviewed officials at those 10 agencies regarding their authorities to enter into EULs and sell and retain the proceeds from the sales of real property. We also reviewed agencies’ asset management plans and real property management policies on issues involving excessing properties, selling properties, and entering into EULs. In addition, we reviewed GSA guidance for federal agencies on declaring excess and selling real property. Furthermore, we reviewed prior GAO reports on real property management, leasing, and selling federal real property.

To determine to what extent agencies with authority to retain proceeds sold real property and how they have used the proceeds, we first obtained and analyzed real property disposition data from the FRPP regarding the 10 agencies. We also interviewed officials from the Office of Management and Budget (OMB) about the reliability of the disposition information contained in the FRPP. After we determined that the FRPP disposition data were unreliable for our purposes, we obtained information on the amount of proceeds from the sales of real property received during fiscal years 2006 and 2007 from the six agencies that are authorized to retain proceeds. We did not independently validate the accuracy of the sales proceeds information that the agencies provided because we considered the data to be sufficiently reliable for our purposes, which was focused more on whether the agencies sold any real property and what they used the proceeds for, rather than an accurate accounting of the funds received for those properties. In addition, we interviewed officials from the 10 agencies about the processes that they follow in

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<sup>30</sup>Under the BRAC process, the Secretary of Defense is authorized to close certain military bases and dispose of property. In the scope of our review, we included real property disposed of by DOD through its authority to convey or lease existing property and facilities outside of the BRAC process.

disposing of real property and their recent real property sales, including the reasons for selling the properties, how they were marketed, and the challenges faced.

To determine the relationship, if any, between agencies having the authority to enter into EULs or retain sales proceeds and the amount of real property that they retained or sold, we interviewed agency officials about the factors they considered in deciding whether or how to dispose of unneeded real property, including the authorities available. We also visited a VA EUL site in Hillsborough, N.J., and interviewed officials from the property management and leasing companies about the agreement and how the property was being used.

To help address the second and third research questions, we also visited federal properties that had been sold or were for sale in Camp Verde, Ariz.; Colorado Springs, Colo.; Denver; Estes Park, Colo.; Glendale, Ariz.; Guilderland, N.Y.; Loveland, Colo.; Middle River, Md.; New York; Peoria, Ariz., Rotterdam, N.Y.; Scotia, N.Y.; Scottsdale, Ariz.; Sedona, Ariz.; and Tucson, Ariz. During the site visits, we interviewed officials involved in the sales, including officials from the agencies that held the properties; GSA; and, when available, the buyers. We also obtained information from the agencies that were authorized to retain the sales proceeds on how they used the proceeds.

**Enclosure II: Selected Real Property Authorities and Retention of Proceeds  
Authorities for Major Real Property Holding Agencies**

<b>Real property holding agency</b>	<b>Authority</b>	<b>Description of authority</b>
DOD <sup>a</sup>	Leases of Non-Excess Property of Military Departments 10 U.S.C. § 2667	The Secretary of a military department is authorized to lease nonexcess real property under the control of the department that is not needed for public use if the Secretary considers the lease to be advantageous to the United States and upon such terms that will promote the national defense or be in the public interest. The term of the lease may not be more than 5 years, unless the Secretary determines the term should be longer to promote the national defense or to be in the public interest. Lease payments shall be in cash or in-kind consideration for an amount not less than fair market value. In-kind consideration includes maintenance, protection, alteration, repair, or environmental restoration of property or facilities; construction of new facilities; providing facilities; or providing or paying for utility services.
DOD	Retention of Proceeds/ Leases of Non-Excess Property of Military Departments 10 U.S.C. § 2667	Proceeds from leases of a military department are deposited into a special account in the Treasury and are available to the Secretary of that military department for such activities as maintenance, protection, alteration, or environmental restoration of property or facilities; construction of new facilities; lease of facilities; or payment of utility services. At least 50 percent of the proceeds received shall be available for activities at the military installations where the proceeds are derived. Prior to fiscal year 2005, any amounts deposited in a special account from the disposition of property were subject to expenditure, as provided in an appropriation act. Beginning in fiscal year 2005, any amounts deposited into a special account from the disposition of property are appropriated and available for expenditure. <sup>b</sup>
DOD	Conveyance of Damaged or Deteriorated Military Family Housing 10 U.S.C. § 2854a	The Secretary concerned is authorized to convey any family housing facility, including the real property associated with the facility, which due to damage or deterioration is in a condition that is uneconomical to repair. The person to whom the facility is conveyed shall pay an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility. <sup>c</sup>
DOD	Retention of Proceeds/ Conveyance of Damaged or Deteriorated Military Family Housing 10 U.S.C. § 2854a	Proceeds of any conveyance of a damaged or deteriorated military family housing facility shall be credited to the Department of Defense Housing Improvement Funds, 10 U.S.C. § 2883, and shall be available, without any further appropriation, to construct family housing units to replace the family housing facility conveyed under this section; to repair or restore existing military family housing; and to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.
DOD	Conveyance or Lease of Existing Property and Facilities 10 U.S.C. § 2878	The Secretary concerned is authorized to convey or lease property or facilities, including ancillary supporting facilities to eligible entities at such consideration the Secretary concerned considers appropriate for the purposes of the alternative authority for acquisition and improvement of military housing and to protect the interests of the United States. <sup>d</sup>
DOD	Retention of Proceeds/ Conveyance or Lease of Existing Property and Facilities 10 U.S.C. § 2883	Proceeds from the conveyance or lease of property or facilities under 10 U.S.C. § 2878 shall be credited to the Department of Defense Housing Improvement Funds. Proceeds may be used to carry out activities with respect to the alternative authority for the acquisition and improvement of military housing, including activities required in connection with the planning, execution, and administration of contracts subject to such amounts as provided in appropriation acts.

<b>Real property holding agency</b>	<b>Authority</b>	<b>Description of authority</b>
DOD	General Services Administration's (GSA) Disposal of Real Property Under a Military Department's Control that is Excess to the Department's Needs 40 U.S.C. § 572	The Administrator of GSA is authorized to dispose of property under the control of a military department that is not subject to closure or realignment and is excess to the department's needs. <sup>o</sup>
DOD	Retention of Proceeds/ GSA's Disposal of Real Property Under a Military Department's Control that is Excess to the Department's Needs 40 U.S.C. § 572	Proceeds from the disposition of the property are deposited into a special account in the Treasury, less expenses incurred by GSA for the disposition. Fifty percent of the proceeds are available for facility maintenance and repair or environmental restoration at the military installation where the property was located, and 50 percent of the proceeds are available for facility maintenance and repair or for environmental restoration by the military department that had jurisdiction over the property. Prior to fiscal year 2005, any amounts deposited into a special account from the disposition of property were subject to expenditure, as provided in an appropriation act. Beginning in fiscal year 2005, any amounts deposited in a special account from the disposition of property are appropriated and available for expenditure.
DOE	Leasing of Excess Property 42 U.S.C. § 7256	The Secretary of Energy is authorized to lease excess real property located at a DOE facility that is to be closed or reconfigured and is not needed by DOE at the time the lease is entered into if the Secretary considers the lease to be appropriate to promote national security or is in the public interest. The term of the lease may be up to 10 years, with an option to renew the lease for another 10 years, if the Secretary determines that a renewal of the lease will promote national security or be in the public interest. Lease payments may be in cash or in-kind consideration for an amount less than fair market value. In kind consideration may include services relating to the protection and maintenance of the leased property.
DOE	Retention of Proceeds/ Leasing of Excess Property 42 U.S.C. § 7256	To the extent provided in advance in appropriations acts, the Secretary is authorized to use the funds received as rents to cover administrative expenses of the lease, maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located.
GSA	Disposition of Real Property 40 U.S.C. § 543	The Administrator of GSA is authorized to dispose of surplus real property by sale, exchange, lease, permit, or transfer for cash, credit, or other property.
GSA	Conveyance of Property Consolidated Appropriations Act of 2005, P.L. No. 108-447, § 412, 118 Stat. 2809, 3259 (2004)	The Administrator of GSA, notwithstanding any other provision of law, is authorized to convey by sale, lease, exchange, or otherwise, including through leaseback arrangements, real and related personal property, or interests therein.
GSA	Retention of Proceeds/ Conveyance of Property Consolidated Appropriations Act of 2005, P.L. No. 108-447, § 412, 118 Stat. 2809, 3259 (2004)	Net proceeds from the disposition of real property are deposited in GSA's Federal Buildings Fund (FBF) and are used for GSA real property capital needs to the extent provided in appropriations acts.
NASA	Enhanced Use Lease Real Property Demonstration 42 U.S.C. § 2459j	The Administrator of NASA is authorized to enter into a lease agreement with any person or entity, including federal, state, or local governments, with regard to any real property at two NASA centers. The lease shall be for fair market value and payments may be in cash. Prior to December 31, 2008, NASA could have

Real property holding agency	Authority	Description of authority
		accepted for lease payments in-kind consideration such as construction, maintenance, or improvement of facilities, or providing services to NASA such as launch and payload processing services. <sup>9</sup>
NASA	Retention of Proceeds/Enhanced Use Lease Real Property Demonstration 42 U.S.C. § 2459j	Cash consideration received for the lease is to be used to cover the full costs to NASA in connection with the lease and shall remain available until expended. Thirty-five percent of any remaining cash shall be deposited in a capital asset account available for maintenance, capital revitalization, and improvements of real property assets under the jurisdiction of the Administrator and shall remain available until expended. The remaining 65 percent of the cash shall be available to the respective center or facility engaged in the lease of nonexcess real property and shall remain available until expended for maintenance, capital revitalization, and improvements of real property assets at the respective center or facility, subject to the concurrence of the Administrator.
NASA	Lease of Non-Excess Property 42 U.S.C. § 2459j	Effective December 31, 2008, the Administrator of NASA is authorized to enter into a lease agreement with any person or entity, including federal, state, or local governments, with regard to any nonexcess real property under the jurisdiction of the Administrator. The lease shall be for cash consideration of the fair market value as determined by the Administrator. <sup>h</sup>
NASA	Retention of Proceeds/Lease of Non-Excess Property 42 U.S.C. § 2459j	Cash consideration received for the lease is to be used to cover the full costs to NASA in connection with the lease and shall remain available until expended. Thirty-five percent of any remaining cash shall be deposited into a capital asset account available for maintenance, capital revitalization, and improvements of real property assets under the jurisdiction of the Administrator and shall remain available until expended. The remaining 65 percent of the cash shall be available to the respective center or facility engaged in the lease of non-excess real property and shall remain available until expended for maintenance, capital revitalization, and improvements of real property assets at the respective center or facility, subject to the concurrence of the Administrator. Effective December 31, 2008, no funds may be used for daily operating costs.
State	Disposition of Property 22 U.S.C. § 300	The Secretary of State is authorized to sell, exchange, lease, or license any property or property interest acquired in foreign countries for diplomatic and consular establishments.
State	Retention of Proceeds/Disposition of Property 22 U.S.C. § 300	Proceeds from the disposition of properties are applied toward acquisition, construction, or other purposes authorized by this chapter; Foreign Service Buildings; or deposited into the Foreign Service Buildings Funds, as in the judgment of the Secretary may best serve the government's interest.
USDA	Enhanced Use Lease Authority Pilot Program 7 U.S.C. § 3125a note <sup>i</sup>	The Secretary of Agriculture is authorized to establish a pilot program and lease nonexcess real property at the Beltsville Agricultural Research Center and the National Agricultural Library to any individual or entity, including agencies or instrumentalities of State or local governments, if the Secretary determines that the lease is consistent with, and will not adversely affect, the mission of the agency administering the property; will enhance the use of the property; will not permit any portion of the property or facility to be used for the public retail or wholesale sale of merchandise or residential development; will not permit the construction or modification of facilities financed by nonfederal sources to be used by an agency, except for incidental use; and will not include any property or facility required for any agency purpose without prior consideration of the needs of the agency. Consideration for any lease shall be for fair market value and for cash. The Secretary is authorized to enter into leases until June 18, 2013, and the term of the lease shall not exceed 30 years.

<b>Real property holding agency</b>	<b>Authority</b>	<b>Description of authority</b>
USDA	Retention of Proceeds/ Enhanced Use Lease Authority Pilot Program 7 U.S.C. § 3125a note	Consideration for leases shall be deposited in a capital asset account, which is available until expended, without further appropriation, for maintenance, capital revitalization, and improvements to the department's properties and facilities at the Beltsville Agricultural Research Center and the National Agricultural Library.
USDA- Forest Service	Conveyance of Forest Service Administrative Sites 16 U.S.C. § 580d note <sup>l</sup>	The Secretary of Agriculture is authorized to convey administrative sites of 40 acres or less under the Secretary's jurisdiction by sale, lease, exchange, or combination of sale and exchange. An administrative site is defined as a facility or improvement, including curtilage, that was acquired or is used specifically for purposes of administration of the National Forest System (NFS); any federal land associated with a facility or improvement that was acquired or specifically used for purposes of administration of Forest Service activities and underlies or abuts the facility or improvement; or not more than 10 isolated, undeveloped parcels per fiscal year of not more than 40 acres each that were acquired or used for purposes of administration of Forest Service activities, but are not being so utilized such as vacant lots outside of the proclaimed boundary of a unit of NFS. This conveyance authority, which would have expired on September 30, 2008, was extended until March 6, 2009. <sup>k</sup>
USDA-Forest Service	Retention of Proceeds/ Conveyance of Forest Service Administrative Sites 16 U.S.C. § 580d note	Proceeds from the conveyance of administrative sites are available to the Secretary of Agriculture, until expended and without further appropriation, to pay any necessary and incidental costs in connection with the acquisition, improvement, maintenance, reconstruction, or construction of a facility or improvement for the NFS, and the conveyance of administrative sites, including commissions or fees for brokerage services.
USPS	Real Property Authorities 39 U.S.C. § 401(5)	The Postal Service is authorized to acquire in any legal manner, real property or any interest therein, as it deems necessary or convenient in the transaction of its business and to hold, maintain, sell, lease, or otherwise dispose of such property or any interest therein.
USPS	Real Property Authorities 39 U.S.C. § 401(6)	The Postal Service is authorized to construct, operate, lease, and maintain buildings, facilities, or equipment, and to make other improvements on any property owned or controlled by it.
USPS	Retention of Proceeds/ Real Property Authorities 39 U.S.C. §§ 2003 and 2401	Proceeds are deposited into the Postal Service Fund and remain available to the Postal Service without fiscal year limitation to carry out the purposes, functions, and powers authorized by Title 39, Postal Service. All revenues received by the Postal Service are appropriated to the Postal Service.
VA	Transfer Authority – Capital Asset Fund 38 U.S.C. § 8118	The Secretary of VA is authorized to transfer real property under VA's control or custody to another department or agency of the United States, to a state or political subdivision of a state, or to any public or private entity, including an Indian tribe until November 30, 2011. The property must be transferred for fair market value, unless it is transferred to a homeless provider. Property under this authority cannot be disposed of until the Secretary determines that the property is no longer needed by the department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the department under the McKinney-Vento Act or by another entity under VA's EUL authority.

<b>Real property holding agency</b>	<b>Authority</b>	<b>Description of authority</b>
VA	Retention of Proceeds/ Transfer Authority 38 U.S.C. § 8118	Proceeds from the transfer of real property are deposited into the VA Capital Asset Fund and, to the extent provided in advance in appropriations acts, may be used for property transfer costs such as demolition, environmental remediation, and maintenance and repair; costs associated with future transfers of property under this authority; costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through minor construction projects; and costs associated with the transfer or adaptive use of property that is under the Secretary's jurisdiction and listed on the National Register of Historic Places.
VA	Enhanced Used Leases 38 U.S.C. §§ 8161-8169	The Secretary of VA is authorized to enter into leases for up to 75 years with public and private entities for underutilized and unutilized real property that is under the Secretary's jurisdiction or control. EULs shall be for "fair consideration," (i.e., cash and/or in-kind consideration, such as construction, repair, or remodeling of department facilities); providing office space, storage, or other usable space; and providing good or services to the department. The authority to enter into EULs terminates on December 31, 2011.
VA	Retention of Proceeds/ Enhanced Use Leases 38 U.S.C. § 8165	Expenses incurred by the Secretary of VA in connection with EULs will be deducted from the proceeds of the lease and may be used to reimburse the account from which the funds were used to pay such expenses. The proceeds can be used for any expenses incurred in the development of additional EULs. Remaining funds shall be deposited into the VA Medical Care Collections Fund (see authority below for additional uses of EUL proceeds).
VA	Retention of Proceeds/ Enhanced Use Lease Property Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, P.L. No. 110- 329, § 213, 122 Stat. 3574, 3711 (2008)	At the Secretary's discretion, proceeds or revenues derived from EUL activities, including disposal, may be deposited into the "Construction, Major Projects" and "Construction Minor Projects" accounts and used for construction, alterations, and improvements of any VA medical facility. <sup>1</sup>
VA	Disposal of Enhanced Use Lease Property 38 U.S.C. § 8164	If the Secretary of VA determines during the term of an EUL or within 30 days after the end of the lease term that the property is no longer needed by the department, the Secretary is authorized to initiate an action to dispose of the property.
VA	Retention of Proceeds/ Disposal of Enhanced Use Lease Property 38 U.S.C. § 8165	Funds received by VA from a disposal of an EUL property are deposited into the VA Capital Asset Fund and may be used to the extent provided for in appropriations acts for property transfer costs such as demolition, environmental remediation, maintenance, and repair; costs associated with future transfers of property under this authority; costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating or establishing patient care facilities through construction projects; and costs associated with the transfer or adaptive use of property which is under the Secretary's jurisdiction and listed on the National Register of Historic Places (see authority below for additional uses of EUL disposal proceeds).
VA	Retention of Proceeds/ Disposal of Enhanced Use Lease Property Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, P.L. No. 110- 329, § 213, 122 Stat. 3574, 3711 (2008)	At the Secretary's discretion, proceeds or revenues derived from EUL activities, including disposal, may be deposited into the "Construction, Major Projects" and "Construction Minor Projects" accounts and used for construction, alterations, and improvements of any VA medical facility.

Source: GAO analysis.

Note: This list is not intended to be an all inclusive list of an agency's authorities. Furthermore, this list specifically excludes DOD authorities to sell or lease property under a base closure or realignment, lands managed by DOI or the Forest Service, except for Forest Service administrative sites and the Agricultural Research Service's EUL pilot program, and transfers of individual properties authorized by Congress.

<sup>a</sup>Our review of DOD did not include real property at a military installation designated for closure or realignment under a base closure law. Therefore, for purposes of this appendix we have excluded DOD authorities relating to base closure or realignment. Additionally, while some authorities in this enclosure, such as 10 U.S.C. § 2667, contain subsections relating to base closure and realignment, for purposes of this enclosure we are referring to the other subsections of the statute.

<sup>b</sup>Department of Defense Appropriations Act of Fiscal Year 2005, P.L. No. 108-287, § 8034, 118 Stat. 951, 978 (2004).

<sup>c</sup>This authority does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing activities located at an installation outside the United States at which the Secretary of Defense terminates operations. See 10 U.S.C. § 2854a(a)(2).

<sup>d</sup>This authority does not apply to property or facilities located on or near a military installation approved for closure under a base closure law. See 10 U.S.C. § 2878(b).

<sup>e</sup>This authority does not apply to property at a military installation designated for closure or realignment pursuant to a base closure law. See 40 U.S.C. § 572(b)(2)(B)(ii).

<sup>f</sup>Department of Defense Appropriations Act of Fiscal Year 2005, P.L. No. 108-287, § 8034, 118 Stat. 951, 978 (2004).

<sup>g</sup>NASA was provided EUL authority in 2003. See the Consolidated Appropriations Resolution of FY 2003, P.L. No. 108-7, §418, 117 Stat. 11, 525-526 (2003).

<sup>h</sup>The Consolidated Appropriations Act for FY 2008, P.L. No. 110-161, § 533, 121 Stat. 1844, 1931-1932 (2007), amended NASA's EUL authority at 42 U.S.C. § 2459j to include any NASA non-excess real property, rather than just nonexcess real property at two NASA facilities. P.L. No. 110-161 also amended NASA's EUL authority at 42 U.S.C. § 2459j to allow for cash consideration only when entering into a lease and to prohibit any cash received for the EUL from being used for daily operating costs. These amendments are effective as of December 31, 2008.

<sup>i</sup>This pilot program was enacted in the Food, Conservation, and Energy Act of 2008, P.L. No. 110-246, § 7409, 112 Stat. 1651, 2014-2016 (2008).

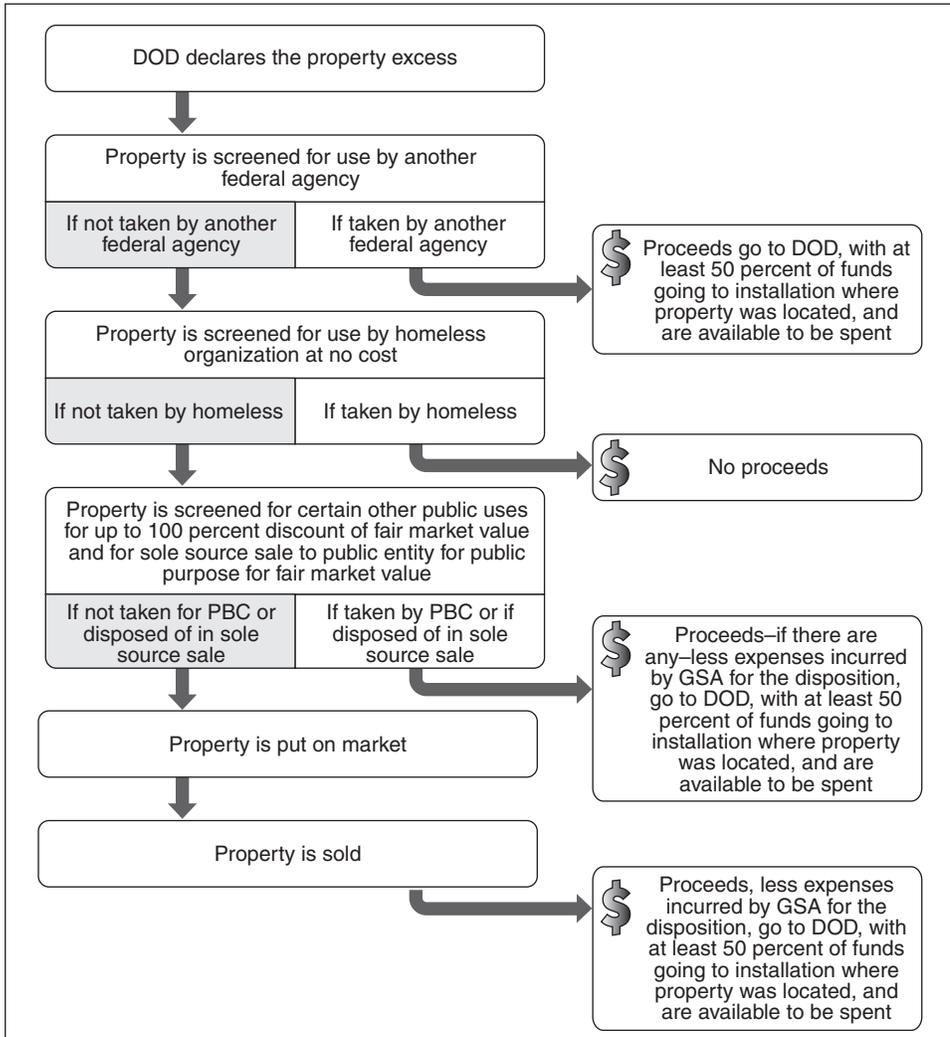
<sup>j</sup>This authority, the Forest Service Facility Realignment and Enhancement Act, was enacted in 2005 as part of P.L. No. 109-54, Title V, §§ 501-505, 119 Stat. 499, 559-563 (2005).

<sup>k</sup>Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of FY 2009, P.L. No. 110-329, §149, 122 Stat. 3574, 3581 (2008).

<sup>l</sup>This provision has been included in numerous appropriations acts. See the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of FY 2009, P.L. No. 110-329, § 213, 122 Stat. 3574, 3711 (2008); the Consolidated Appropriations Act of FY 2008, P.L. No. 110-161, § 213, 121 Stat. 1844, 2270 (2007); the Consolidated Appropriations Act of FY 2005, P. L. No. 108-447, § 117, 118 Stat. 2809, 3293 (2004); and the Consolidated Appropriations Act of FY 2004, P.L. 108-199, § 117, 118 Stat. 3, 371 (2004).

# Enclosure III: Flow Charts of Agencies' Real Estate Disposal Processes

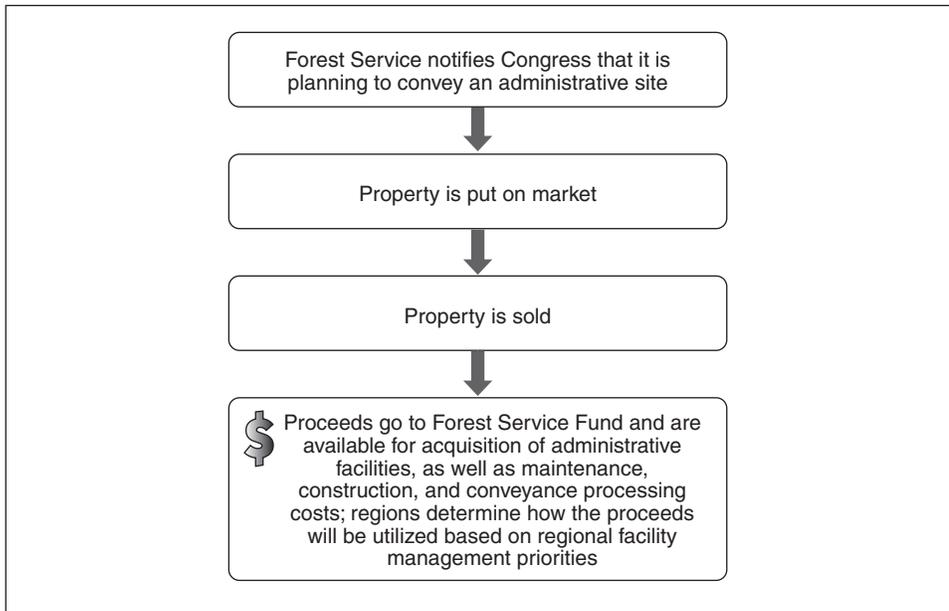
**Figure 9: DOD's Real Property Disposal Process**



Source: DOD.

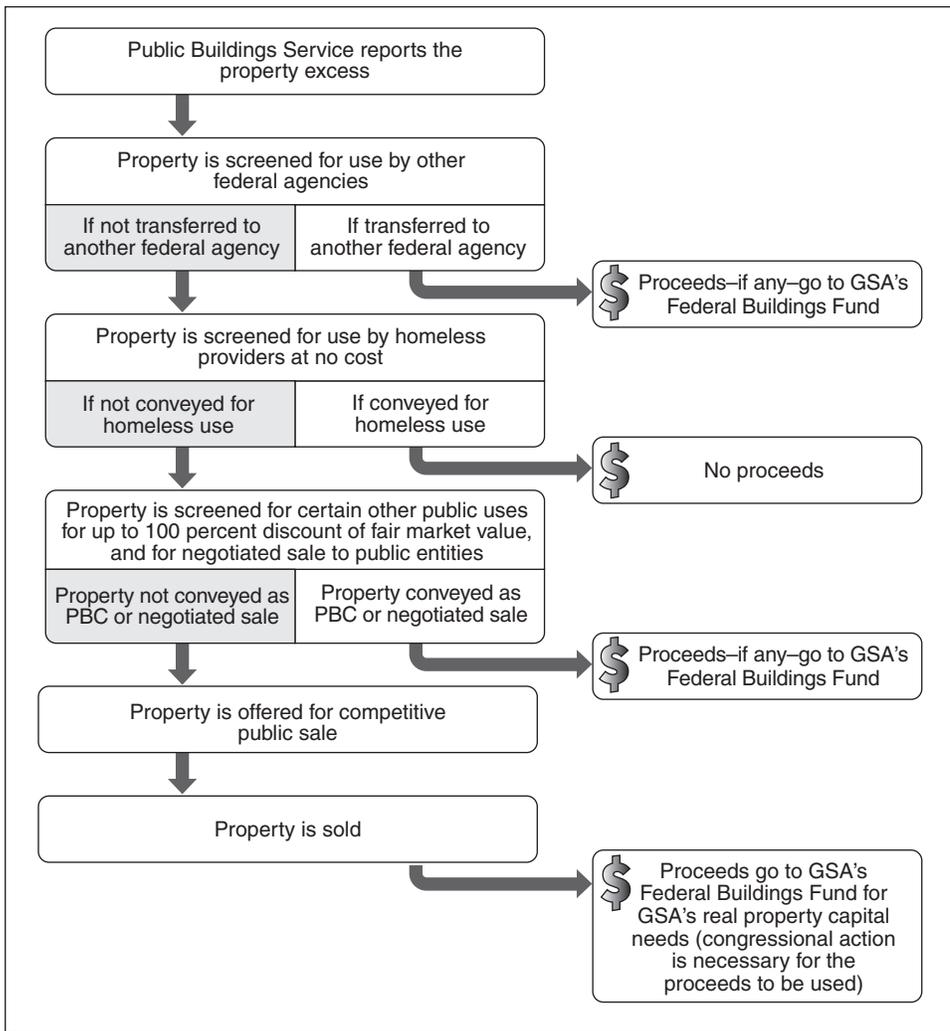
Note: This flow chart reflects the disposal process under 40 U.S.C. § 572.

**Figure 10: Forest Service's Real Property Disposal Process**



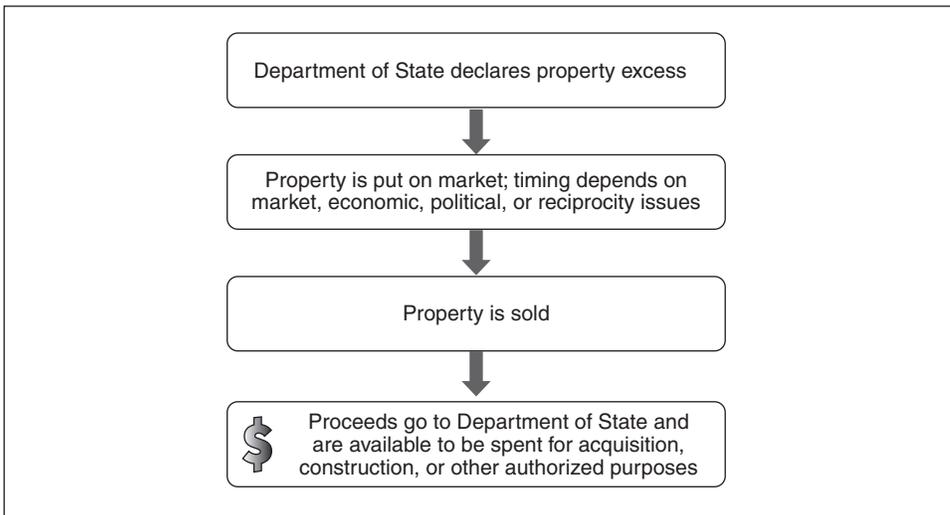
Source: USDA.

**Figure 11: GSA's Process for Selling Excess GSA-Controlled Real Property**



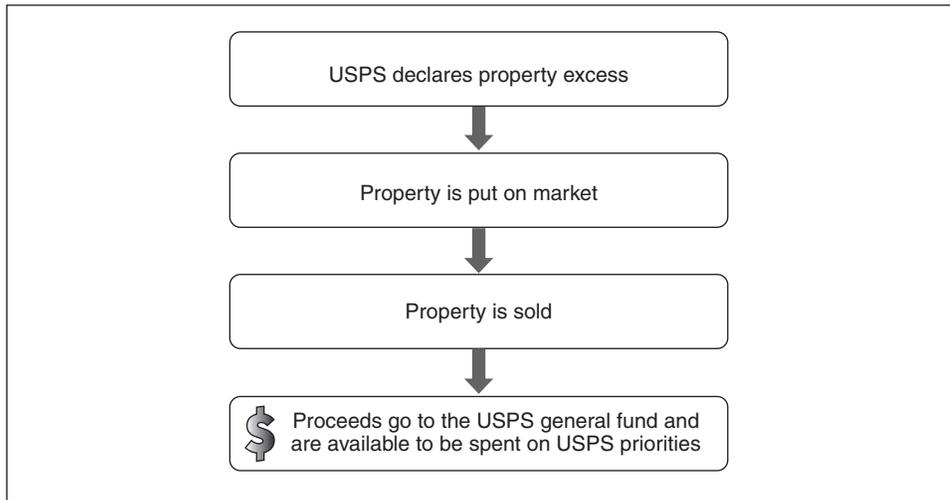
Source: GSA.

**Figure 12: State Department's Real Property Disposal Process**



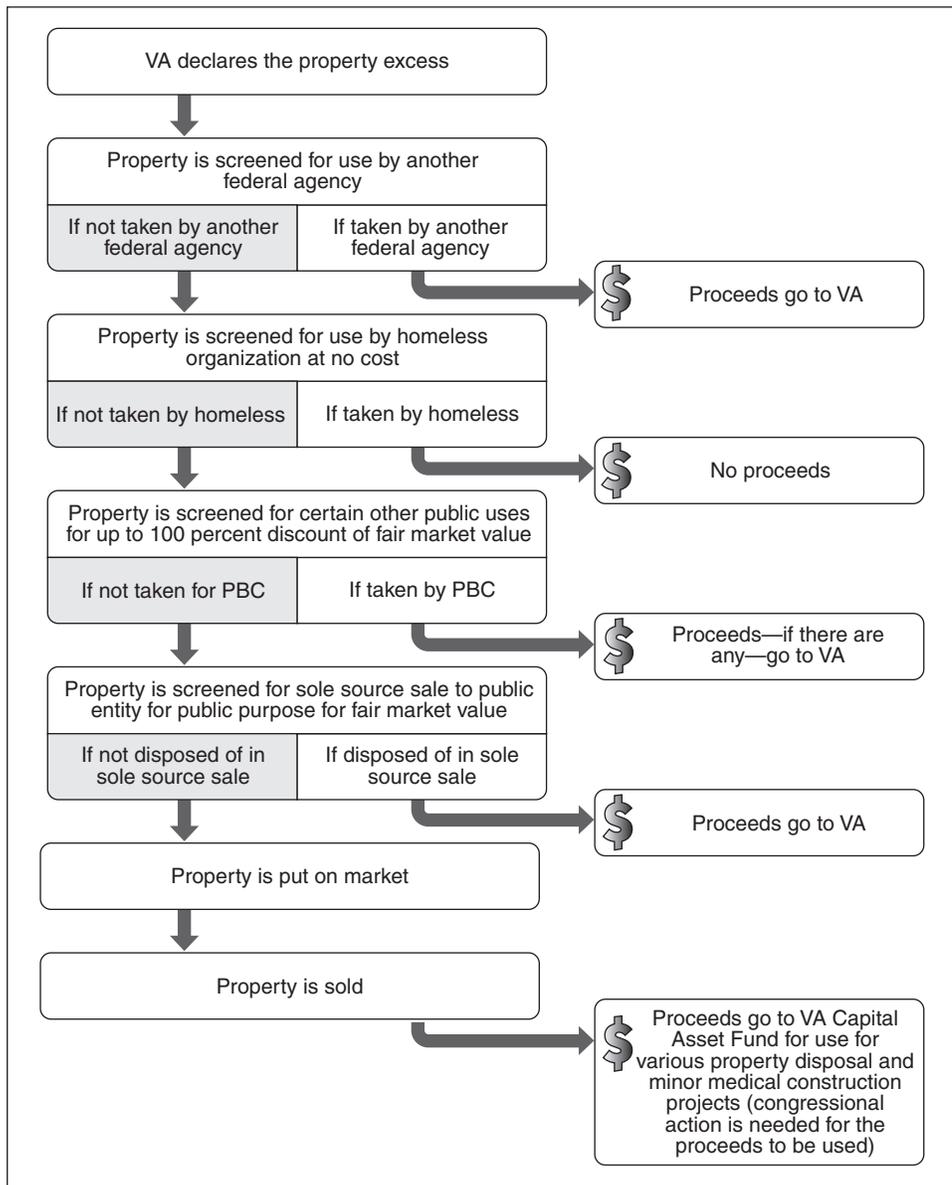
Source: State Department.

**Figure 13: U.S. Postal Service's Real Property Disposal Process**



Source: USPS.

**Figure 14: VA's Real Property Disposal Process**



Source: VA.

Note: If sold by GSA, the proceeds are given to the U.S. Treasury.

## **Enclosure IV: GAO Contact and Staff Acknowledgments**

### **GAO Contact**

David Wise, (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov)

### **Staff Acknowledgments**

In addition to the individual named above, Mike Clements (Assistant Director), Bob Homan, Grant Mallie, Josh Ormond, Susan Michal-Smith, and Alywnne Wilbur made significant contributions to this report.

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