

Homeless Assistance: Advocating to Use Federal Surplus Property to Create More Affordable Housing

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Administering Agencies: HUD, Health and Human Services (HHS), General Services Administration (GSA)

Year Program Started: 1987

Number of Persons/Households Served: More than 2 million each year

Populations Targeted: Unhoused people

Funding: The Title V program does not receive an appropriation.

See Also: For further information, reference [Public Property/Public Need: A toolkit for using vacant federal property to end homelessness.](#)

Title V of the “McKinney-Vento Homeless Assistance Act of 1987” (Title V) makes HUD responsible for leading a cross-agency effort to identify unneeded federal properties suitable for use by non-profit agencies and local governments to house and serve homeless people. Once suitable and available properties are identified, homeless service providers have a right of first refusal to acquire the federal property through an application process administered by HHS. Approved applicants can obtain title to the property - or long-term lease of the property at the applicant’s option – **for free.**

Title V has enabled service providers and local government agencies to acquire highly valuable real property to provide housing, emergency shelter, food, job training, medical care, and other critical services to over 2 million homeless people each year. Moreover, Title V saves taxpayer dollars by reducing operations and maintenance costs associated with unused and unneeded federal properties.

To date, over 500 buildings in at least 30

states and the District of Columbia have been transferred to nonprofit organizations and local governments under Title V. Despite this impressive number, Title V is a **significantly underutilized program.** Bureaucratic obstacles and strict requirements to demonstrate financing for redevelopment and operations lead to frequent application denials. According to a 2023 article in The Guardian, since 2016, 2 out of every 3 applications for Title V property to serve unhoused persons are denied by the federal government. Yet, simple regulatory changes could ensure the program could be used to streamline the creation of thousands of units of permanent affordable housing (see “Opportunities for Advocacy” below).

HISTORY AND PURPOSE

The “McKinney Act” first passed in 1987 and was later renamed the “McKinney-Vento Act.” Title V was included in the original legislation in recognition that homeless service providers working to end homelessness often cannot afford the purchase price of real property in addition to the costs of providing needed services. Meanwhile, the federal government has property that it no longer needs.

In 2016, Title V was amended by the “Federal Assets Sale and Transfer Act of 2016” (H.R. 4465), which made several critical improvements to the law, including making explicit that Title V properties can be developed into permanent affordable housing, including supportive housing. Nevertheless, as discussed below in **Opportunities for Advocacy**, few units have been developed into affordable housing due to the federal government’s refusal to permit use of Low-Income Housing Tax Credits and other commonly used financing streams to convert Title V property into affordable housing.

PROGRAM SUMMARY - HOW TITLE V WORKS

SCREENING

Landholding agencies report the status of their real estate holdings to HUD on a quarterly basis. HUD screens unutilized, underutilized, excess, and surplus properties to determine whether they are suitable for homeless services organizations. All such suitable properties are published online at <https://www.hudexchange.info/programs/title-v/suitability-listing> on a weekly basis. Properties that are listed as suitable and available may be conveyed via deed or lease at no charge to nonprofit groups, state agencies, and local governments following successful application to the U.S. Department of Health and Human Services (HHS).

EXPRESSION OF INTEREST

When a homeless service provider identifies a property of interest, it has 30 days to submit a written expression of interest to HHS. This is simply a brief letter identifying the group, the property of interest, and a brief description of the proposed use. Once HHS receives this letter, it provides the nonprofit or public agency with a full application.

APPLICATION

Groups have 75 days to complete an initial application. Unlike the short expression of interest letter, the application is detailed and requires information about the services that will be offered, the need for such services, and the ability of the applicant to offer such services. Once HHS receives the completed initial application, the agency has 10 days to make an approval or disapproval determination. If an initial application is approved by HHS, the applicant has an additional 45 days to submit a “**reasonable plan to finance**” the conditionally approved program. HHS has 15 days after receipt of the full application to make a final determination.

OPPORTUNITIES FOR ADVOCACY

ELIMINATING THE CATCH 22 – FEDERAL GOVERNMENT SHOULD PERMIT USE OF LOW INCOME HOUSING TAX CREDITS IN TITLE V PROPERTIES

As discussed above, Title V was amended in 2016 to clarify that the program could be used to develop permanently affordable housing, including supportive housing. Yet, few units have been developed due to the federal government’s refusal to permit use of Low-Income Housing Tax Credits (LIHTCs) or other commonly used financing streams to finance the properties. Essentially, the federal government does not allow nonprofits or state and local governments to use the most common form of affordable housing financing to redevelop Title V properties into affordable housing!

The refusal to permit use of these financing streams is not explicit in the statute or regulations. Instead, HHS has interpreted its own regulations to require that all applicants have funding in place before submitting the “reasonable plan to finance” identified above. Only when this funding is in place and the financing plan is approved, will HHS approve the application, enabling title or a long-term lease to be issued.

Because the LIHTC program requires some evidence of “site-control” - i.e. a deed or long-term lease – in order to apply for tax credits, the Title V program effectively prohibits applicants from using LIHTCs. This position is a **Catch 22** – an applicant to LIHTCs needs “site control” to apply for financing and the federal government will not transfer “site control” until all financing is in place.

In March 2023, the federal government issued the first proposed regulatory updates to the program since 1991. Those proposed regulations, however, did not resolve the **Catch 22** issue. The National Homelessness Law Center’s comment, with sign-ons from national and local partners, is available here: [Regulations.gov](#) The proposed regulations have not been finalized. The National Homelessness Law Center is advocating that

the federal government allow use of LIHTCs to redevelop Title V property into affordable housing.

FEDERAL GOVERNMENT SHOULD ALLOW SUFFICIENT TIME FOR AFFORDABLE HOUSING DEVELOPMENT

Neither the current Title V regulations nor the Proposed Rules provide applicants with enough time to renovate surplus property for use providing affordable housing. Current HHS regulations require a successful applicant to place the acquired property “into use” within 12 to 36 months. HHS interprets this rule to require that applicants have their proposed program fully operable and use the entirety of the transferred property within three years or the property will be subject to reversion to the government. This regulatory requirement is impossible to meet for many housing programs. Affordable housing developments typically take four to seven years from acquisition to completion to bring into use. The 36-month regulation is not mandated by the Title V statute and could be easily extended to allow for affordable housing development and the Law Center urges the federal government to provide a timeline that more accurately reflects to time it takes to develop affordable housing.

FEDERAL GOVERNMENT SHOULD ALLOW TITLE V PROVIDERS A REASONABLE OPPORTUNITY TO CURE

HHS is responsible for oversight of properties transferred under Title V to ensure those properties are used to house and serve unhoused people. In practice, it can be difficult to impossible for Title V applicants and transferees to comply with HHS’ rigid approach to oversight. Furthermore, the current Title V regulatory structure empowers HHS to unilaterally determine whether a transferee is complying with the conditions of transfer, and to revert the property to the government if a transferee is found to be noncompliant. HHS has sole discretion over whether to seek reversion of the property, even for minor technical violations of program rules. HHS also has unfettered discretion to seek reversion of the property

even when forces outside of the transferee’s control have caused a temporary interruption in approved services. Both the current and proposed regulations fail to provide any process to allow the homeless services provider to cure any program violations, unlike most other programs. The Law Center urges the federal government to provide a reasonable process to cure alleged violations.

WHAT TO SAY TO LEGISLATORS

Advocates should meet with their members of Congress with the message that surplus federal property can be converted into affordable housing through the Title V program but is underutilized because of unnecessary bureaucratic obstacles. Advocates should ask their members of Congress to urge HHS, HUD, and GSA to install policies that maximize use of surplus property for permanent housing and services. Three simple regulatory changes would allow for the creation of potentially thousands of units of affordable housing, namely:

1. Allow Title V applicants to use LIHTCs or other common affordable housing financing tools;
2. Allow a reasonable timeline for affordable housing development; and
3. Allow Title V providers an opportunity to cure any alleged program violations.

You can also urge HUD to expand outreach efforts to make local governments and nonprofit agencies aware of the program.

FOR MORE INFORMATION

For information about how to search and successfully apply for surplus federal properties, contact the National Homelessness Law Center, 202-638-2535, www.homelesslaw.org.