**VA Office of Real Property Leasing Policy and Process Changes Resulting from the PACT Act**

**Introduction**

The Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, implemented by [P.L. 117-168](https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf) significantly broadens access to health care and benefits for Veterans exposed to toxic substances. The legislation also included changes to VA’s authorities resulting in enhancements to VA’s Real Property Leasing and Enhanced-Use Lease programs.

**Sections 702-707 of the Act** provide resourcing to enable and fund leases and other agreements to accomplish VA’s mission. These resources include:

* Authorization of pending leases and streamlined leasing approvals
* Enhanced authority to enter into non-competitive leases with Academic Affiliates
* Funding for leases and Enhanced-Use Leases (EUL)

This Fact Sheet only addresses policy and process changes specific to VA’s Office of Real Property (ORP) Leasing Program (“Leasing”) resulting from Sections 703, 704 and 706, as codified in 38 U.S.C. §§ 8103, 8104 and 8111B.

Sections 702 and 707 provide the authorization of and appropriation for, respectively, 31 Major and Mid-Level leases. The entire list of leases and funding may be viewed in the respective sections of [P.L. 117-168](https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf).

Section 705 is EUL program specific; inquiries should be referred to EUL.Team.Management@va.gov.

**38 U.S.C. § 8104. Congressional approval of certain medical facility acquisitions**

**Summary of 38 U.S.C. § 8104 amendments due to P.L. 117-168, Sec. 703. Statutory sections included; access full text** [**here**](https://uscode.house.gov/view.xhtml?req=38+usc+8104&f=treesort&fq=true&num=10&hl=true&edition=prelim&granuleId=USC-prelim-title38-section8104)**.**

* Replaces Congressional authorization with **Committee Resolutions for Major Level Leases** by VA’s Senate Veterans Affairs and House Veterans Affairs and GSA’s House Transportation & Infrastructure and Senate Environment & Public Works. *(a)(2)(B)*
* **Increases VA’s lease prospectus threshold** to align with GSA’s lease prospectus threshold, which is currently **$3.613M**. *(a)(3)(B)(i)*
* **Allows interim leasing actions for Major Level Leases** when deemed necessary *(i)(1)*
* Authorizes the inclusion of a **purchase option** for a Major Level Lease. *(j)*

**VA Policy and Process Changes**

* Major and Mid-Level Lease definitions were updated to differentiate between the new prospectus threshold and non-prospectus leases greater than $1M (Refer to page 3)
* Major and Mid-Level Lease packages should be sent to ORP for execution
* Only SCIP approved Major Level Leases will be included in VA’s annual Budget Request for VA and GSA Committees to provide Resolutions
* Expansions to Major or Mid-Level Leases require consultation with ORP and OGC
* Interim Leasing Actions may be executed if a prospectus has been submitted to Congress
* Purchase options may be included in Major Level Leases if included in the approved SCIP business case, GSA delegation and the lease scores as an operating lease
* SCIP, GSA Delegation and compliance with VA’s Rule of Two remain unchanged

**38 U.S.C. § 8103. Authority to construct and alter, and to acquire sites for, medical facilities**

**Summary of 38 U.S.C. § 8103 amendments due to P.L. 117-168, Sec. 704. Statutory section included; access full text** [here](https://uscode.house.gov/view.xhtml?req=38+usc+8104&f=treesort&fq=true&num=9&hl=true&edition=prelim&granuleId=USC-prelim-title38-section8103)**.**

* Expands 38 U.S.C. § 8103 to provide explicit authority to lease from academic affiliates or covered entities. *(h)*
* Authorizes the Secretary to enter into leases with academic affiliates to acquire space for the purpose of providing health-care resources to Veterans notwithstanding competitive procedures (i.e., sole source)
	+ Includes “space” (room, unit, floor, wing, building, parking facility) owned/controlled by academic affiliate
	+ Space controlled by affiliate may include space owned by a State, local, municipal government, public or nonprofit agency, or other institution the Secretary considers appropriate

**VA Policy and Process Changes**

* Provides VA statutory authority to lease space with approved academic affiliates without full and open competition
* Space must meet minimum lease technical requirements
* Justification for Other than Full and Open Competition (JOTFOC) is required for leases above the Simplified Lease Acquisition Threshold (SLAT)
* Lack of Competition – Memo to File is required for leases at or below SLAT
* If affiliate space does not meet VA space or technical requirements, competition must be sought, including compliance with VA’s Rule of Two
* SCIP and GSA Delegation requirements remain unchanged

**38 U.S.C. § 8111B. Shared medical facilities with Department of Defense**

**Summary of 38 U.S.C. § 8111B due to P.L. 117-168, Sec. 706. Statutory section included; access full text** [**here**](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section8111B&num=0&edition=prelim)**.**

* Adds 38 U.S.C. § 8111B to expand VA’s authority to enter into agreements with DoD for planning, design, and construction of shared medical facilities to include leasing of facilities. *(a)*
* Includes transfer of funds for leasing, and to keep and **use funds for shared medical facility leases.** *(b)(3) and (c)(3)*
* VA’s portion of the estimated lease costs **must be less than VA’s prospectus threshold**. *(b)(3)*
* DoD’s statutory authority was updated similarly

**VA Policy and Process Changes**

* If VA is the lead agency for the lease procurement:
	+ GSA Delegation for the entire leased space is required
	+ Compliance with VA’s Rule of Two is required
* SCIP approval is required for VA’s portion of the space regardless of the lead agency

**Frequently Asked Questions**

**Space Requirements:**

**Q:** *Does an academic affiliate or VA-DoD lease for new space need to go through SCIP?*

**A:** Yes, the standard process, including SCIP and GSA delegation, is required for all leases, regardless of size.

**Q:** *What should I do if the affiliate or DoD has less space than the requirement?*

**A:** The affiliate or DoD must meet the agency’s minimum requirements, otherwise the lease must be competed.

**Q:** *What should I do if the affiliate or DoD has more space than the requirement?*

**A:** The government is prohibited from leasing space in excess of the space requirement.

**Q:** *Will compliance with VA seismic requirements be required?*

**A:** Yes, if compliance with VA Standards of Seismic Safety for Existing Federally Owned and Leased Buildings cannot be met, lease competition will be required.

**Q:** *Will compliance with VA life safety/physical security be required?*

**A:** Yes, if compliance with VA life safety/physical security cannot be met, either a lease competition will be required,

or a waiver process must be pursued through VHA’s Physical Security Committee.

**Definitions:**

**Q**: *The PACT Act allows the Secretary to enter into a lease with a covered entity, what is included in “covered entity” definition?*

**A**: The proposed lessor is a covered entity, meaning a unit or subdivision of a State, local, or municipal government, public or nonprofit agency, institution, or organization, or other institution or organization as the Secretary considers appropriate that owns **property controlled by an academic affiliate** to be leased under this subsection.

**Q:** *Can VA acquire healthcare resources from the affiliate or share VA healthcare resources with DoD as part of the lease?*

**A**: No. Sharing of healthcare resources with an affiliate under 38 U.S.C. § 8153 or with DoD under 38 U.S.C. § 8111 must be executed via separate contract(s).

**Q:** *Can space at more than one location/ address with the same affiliate or DoD be included in the lease?*

**A**: No. A separate SCIP and GSA delegation are required for each (individual) space lease.

**Process:**

**Q**: *With the increase in prospectus threshold, will Field Leasing Contracting Officers execute leases between $1M and $3.613M in estimated average annual rent?*

**A**: No. CFM ORP will continue to execute leases above estimated $1M in average annual rent.

**Q**: *For leases below the Simplified Lease Acquisition Threshold (SLAT), are the SCIP approval, GSA delegation, market research, and acquisition package steps still required?*

**A**: Yes. The standard process, including SCIP and GSA delegation, is required for all leases, including SLAT leases.

**Q:** *Can a sole source lease be awarded if Academic Affiliate rental rates are determined* ***not*** *to**be fair and reasonable?*

**A**: No. If the proposed sole source rental rates are determined to not be fair and reasonable, a lease competition is required.

**Q:** *Are there special forms that need to be completed for a sole source lease to an affiliate under the PACT Act?*

**A**: Yes. Justification for sole source must be completed – Justification for Other than Full and Open Competition is available from ORP.

**Links to Additional References**

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| **Topic** | **Office** |
| Office of Real Property Policy Intranet | [Office of Real Property – Office of Construction & Facilities Management](https://vaww.cfm.va.gov/real/index.asp)  |
| Leasing (including Justifications for Other than Full and Open Competition, Simplified Lease Acquisition Threshold) Templates | [Office of Construction and Facilities Management, Office of Real Property, Policy & Programs Service (003C7A)](https://dvagov.sharepoint.com/sites/VACOVACOCFM/RealProperty/Policy_ProgramsService) |
| Enhanced Use Lease (EUL) | [Office of Asset Enterprise Management](https://www.va.gov/oaem/) |
| Academic Affiliates and Sharing Agreements under 38 U.S.C. § 8153 | [VHA Medical Sharing/Affiliate National Program Office (MSO)](https://www.va.gov/PLO/index.asp)[Medical Sharing Office (MSO) SharePoint](https://dvagov.sharepoint.com/sites/VHAProcurement/PLOMSO%28OLD%29/default.aspx)[The National Center for Healthcare Advancement and Partnership (HAP)](https://www.va.gov/VADODHEALTH/Medical_Sharing.asp)[Office of Academic Affiliation (OAA)](https://www.va.gov/oaa/) |
| VA/DoD Health Care Resource Sharing under 38 U.S.C. § 8111 | [VA/DoD Medical Sharing Office](https://www.va.gov/VADODHEALTH/Medical_Sharing.asp)  |
| Strategic Capital Investment Planning (SCIP) | [Office of Asset Enterprise Management](https://www.va.gov/oaem/) |
| Strategic Partnerships | [Secretary’s Center for Strategic Partnership (SCSP)](https://www.va.gov/scsp/) |

**Updated Lease Definitions**

**Major Level Lease:** The term “major lease” or “major level lease” means the net average annual rent for the term of the lease (including option periods and excluding the cost of services) is equal to or greater than the prospectus level threshold amount for the fiscal year in which award is to be made, requiring the prior submission and approval of a prospectus. The prospectus threshold for VA is the “major medical facility lease threshold” as defined in 38 U.S.C. § 8104(a)(3)(B), excluding the cost of services.

**Mid-Level Lease:** The term “mid-level lease” means leases exceeding $1,000,000 in annual unserviced rent (net average annual rent for the term of the lease, including option periods and excluding the cost of services) but less than the major level lease threshold[[1]](#footnote-1).

**Minor Lease:** The term “minor lease” or “minor level lease” means leases of $1,000,000 or less in annual unserviced rent (net average annual rent for the term of the lease, including option periods and excluding the cost of services).

1. [OMB Circular A-11 Appendix B](https://www.whitehouse.gov/wp-content/uploads/2018/06/app_b.pdf) reflects 2023-2025 prospectus thresholds which are not yet reflected at [Annual prospectus thresholds | GSA](https://www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds). [↑](#footnote-ref-1)