

Statement of the National Law Center on Homelessness & Poverty

United States House of Representatives,
Committee on Oversight and Government Reform

Disposal of Federal Real Property:
Legislative Proposals

July 27, 2011

Introduction

Chairman Issa, Ranking Member Cummings, members of the Committee - thank you for the opportunity to submit a statement for the record of this important hearing. Executive Director Maria Foscarinis will provide an oral summary of this testimony at the hearing.

The mission of the National Law Center on Homelessness & Poverty is to serve as the legal arm of the nationwide movement to end homelessness. We do this through policy advocacy, public education, and impact litigation. Ms. Foscarinis played an instrumental role in drafting the original McKinney-Vento Homeless Assistance Act in 1987 (“McKinney Act”). Since that time we have worked to strengthen the McKinney Act, most recently through passage of the HEARTH Act of 2009.

In 1987, Title V of the McKinney Act put in place a set of important rights for homeless persons. Under the law, homeless service providers have a right of first refusal to acquire federal property no longer needed by the government, to provide housing and services to people who are homeless. More than 2.4 million Americans each year benefit from assistance provided through these programs. As Congress reviews efforts by federal agencies to dispose of property that they no longer use or need, reforms must focus on improving the process by which those agencies work, not on curtailing the ability of homeless persons to obtain housing. Homeless Americans should not suffer for the failings of government agencies.

The legislative process typically requires the careful balancing of competing interests, in order to achieve important policy goals. In the case of federal property disposal reform, however, we think that the needs of homeless Americans are in alignment - not conflict - with the goal of making government more efficient. Consequently, while we believe that homelessness interests are of paramount importance, the Law Center feels strongly that we can protect the ability of homeless service providers to access surplus government property while still increasing government efficiency. Our statement will focus on how best to accomplish this goal.

The Federal Government Has A Strong Interest In Ending Homelessness

Each year, more than three million Americans experience homelessness, including 1.3 million children. According to the U.S. Conference of Mayors 2010 “Hunger and Homelessness Survey,” family homelessness has skyrocketed during the recession, with unemployment and a lack of affordable housing driving a 9% increase in the last year. Over 70% of officials surveyed for the report expect family and individual homelessness to increase further during 2011. Three-quarters of Americans believe that housing is a human right and two-thirds believe Congress should be doing more to ensure it.¹ The U.S. government has responded to its citizens with domestic and international commitments to end homelessness. At the recent Universal Periodic Review, the U.S. agreed to “[take]

¹ Opportunity Agenda, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public*, 19, 22 (2007).

further measures ... in the areas of economic and social rights for women and minorities, including ... reducing the number of homeless people” and to “reinforce the broad range of safeguards in favor of the most vulnerable groups such as ... the homeless to allow them the full enjoyment of their rights and dignity.”²

In June, 2010, the U.S. Interagency Council on Homelessness released “Opening Doors: Federal Strategic Plan to Prevent and End Homelessness.” Drafted largely by HUD Secretary Shaun Donovan, HHS Secretary Kathleen Sebelius, VA Secretary Eric K. Shinseki, and Labor Secretary Hilda Solis, the plan’s central belief is that “no one should experience homelessness—no one should be without a safe, stable place to call home.”³ Congress has made a similar pledge—the HEARTH Act of 2009 established “a Federal goal of ensuring that individuals and families who become homeless return to permanent housing within 30 days.”⁴

This is a wise policy. In the wealthiest country in the world, homelessness is a moral disgrace. And ending homelessness saves money – it costs far less to provide an individual or a family with housing and supportive services than it does to leave them sleeping on the street, in emergency rooms, or in prison.⁵

The Title V Process Is Working Well In Support of Ending Homelessness

Since 1987, Title V of the McKinney Act has given qualified homeless service providers the legal right to receive suitable vacant, underused, and surplus federal real property at no cost. Title V links non-profits and state and local governments in need of land or buildings with federal agencies seeking to divest themselves of excess property. In order to receive surplus property through Title V, homeless service providers must complete an extensive application and work with HUD, Health and Human Services, and the General Services Administration to prove their programmatic and financial capacity to provide services in the available property.

Successful Title V applicants have used surplus federal properties to provide services to millions of homeless people throughout the country each year, including shelter, transitional and permanent housing, case management, food pantries, job training, mental health and substance abuse treatment, and childcare. Since the program began in 1989, nearly 500 pieces of surplus federal property, including buildings and vacant land, have been transferred to homeless service providers. In 2011, we estimate that programs based in Title V properties will provide services to 2.4 million homeless people from Maine to Montana.

² United States of America, Addendum to the Report of the Working Group on the Universal Periodic Review, ¶¶ 6, 19, U.N. Doc. A/HRC/16/11/Add.1 (March 8, 2011).

³ United States Interagency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness (June 2010).

⁴ Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009, Pub. L. No. 111-22 (2009).

⁵ See, e.g., Thomas L. Moore, Estimated Cost Savings Following Enrollment In the Community Engagement Program: Findings From A Pilot Study of Homeless Dually Diagnosed Adults (June 2006).

- When the New England Center for Homeless Veterans opened on the site of a former Veterans Administration Outpatient Clinic in Boston, it was the nation's first veteran-specific homeless shelter. Recognized as the 142nd "Point of Light" by President George H.W. Bush's administration, NECHV is the largest veterans shelter in the region, offering services ranging from emergency shelter and transitional housing to employment training and health care to homeless veterans. Its founders and many of the staff and board are fellow veterans who understand and help their comrades back to recovery. Today, NECHV shelters 250 homeless veterans per night; in its twenty-year history, it has served over 16,000 veterans and more than a million meals. Since its founding, NECHV has served over 16, 000 veterans, and its soup kitchen alone serves over 220,000 meals per year, while its shelter houses an average of 250 veterans per night.
- In 1991, Our House Shelter in Little Rock, Arkansas applied for and received property on the site of a former VA hospital that the group converted into a family shelter. According to Executive Director Georgia Mjartan: "In the 20 years since Our House began operating on the VA Hospital site, over 6000 homeless people have lived on the campus of the former hospital. Of these 6000, approximately 2000 were homeless children. Of the adults served, over 70% found full time jobs while living at Our House and left the program with jobs and money in savings and most importantly with the ability to move out into their own place—out of homelessness once and for all."
- The Emmaus Homeless Shelter was founded in 1992 on the site of a long-vacant post office in rural Ellsworth, Maine. Says its Director, Sister Lucille MacDonald, "I cannot imagine what life would be like for the homeless and those individuals and families struggling to survive if the Emmaus Homeless Shelter never existed. In the first four months of 2011, this wonderful building acquired through Title V of the McKinney-Vento Act has given 2313 bed nights to homeless individuals [and] families. The shelter has been full to capacity since last October and with a lengthy waiting list. We have also been the catalyst for 6711 individuals/families to receive non-residential services – food, clothing, furniture, linens, help with electric, fuel, medications, etc." According to Sister MacDonald, "[o]ne big advantage of ... Title V... is the fact that we do not have to pay rent for the use of the building ... [U]pkeep of the building and surrounding area is financially difficult enough and if we had rent responsibilities, we would not be able to support the many needed components of caring for those in need."
- A former U.S. Army training center and armory in Kalispell, Montana is now Samaritan House, a multi-dimensional housing and services community for homeless individuals, veterans, and families in northwest Montana. The acquisition of the property in July 2008 more than doubled Samaritan's property holdings and permitted them to vastly expand their emergency shelter and transitional housing programs. Today, Samaritan House houses more than 1500 men, women, and children every year, and serves over 21,000 meals annually.

In these troubling economic times, we need to encourage additional homeless service providers to use surplus federal property wisely and efficiently. We must not take these opportunities away.

The Federal Real Property Disposal Process Is Not Delayed By Title V

The Law Center understands the concerns of this Committee, and the Office of Management and Budget (OMB), that the federal government may not be disposing of surplus federal real property in the most efficient manner possible. In order to maintain the faith of citizens in the federal government's ability to accomplish important policy goals such as ending homelessness, our government must manage its resources prudently.

However, agreement on the problem must be step one. In order to propose responsible solutions, this Committee must also determine what is causing the problem. Because the Title V process is not the cause of delays in the federal property disposal process, it should not be drastically altered or eliminated in the name of procedural reform.

The Law Center has reviewed documents recently released by OMB, indicating that more than 14,000 federal properties are available for sale or other methods of disposal including demolition, but are instead simply sitting unused, costing the government money to maintain as well as the potential proceeds from any sale. We do not disagree with the OMB estimate of how many properties are available. However, we reject any conclusion that Title V is responsible for the inability of government to dispose of these properties. Indeed, OMB itself does not reach that conclusion, saying only that properties cannot be disposed of due to "competing stakeholder interests as well as the cumbersome nature of the process for disposing of Federal real estate."

The first part of that sentence could be considered an allusion to Title V. However, the conclusion that Title V unreasonably delays federal surplus property sales is not supported by fact. Title V requires agencies to provide HUD, on a quarterly basis, with a list of all properties no longer being used. If HUD finds the property to be suitable for homeless use, there is a 60 day period in which homeless service providers are able to apply for property without the risk that it can be sold or otherwise disposed of. If no application is received during this time, the federal government is free to dispose of surplus property as it sees fit. The process takes a matter of months, and once complete the federal government may move forward with any alternative means of property disposal.

Based on a review of HUD data on existing properties that have entered the Title V process, we know that nearly all of the 14,000 properties have long since completed the Title V process and are freely available for sale. Homeless service providers declined to pursue the properties during the statutory Title V period after determining that they were not viable locations for providing homeless services, and they do not claim any ongoing right to access that pool of properties. If they continue to languish unsold, it is because the properties themselves are not attracting any commercial interest or because federal

agencies do not have a strong system in place for conducting property sales after Title V review.

In the first case, there is little that can be done to make properties more attractive for sale. Many of them are old buildings, often containing asbestos, lead paint, or other environmental hazards requiring abatement or remediation. In the second case, the proper remedy would be to make improvements to the subsequent steps of the federal surplus property disposal process that occur after homeless service providers have the opportunity to acquire property through Title V.

Effectively Reforming Title V While Improving The Federal Property Disposal Process

Although we reject the contention that the Title V process is responsible for delays in the federal surplus property disposal process, the Law Center has consistently worked with Congress, HUD, and other federal agencies to promote legislative proposals that would improve Title V. As we have indicated to the Committee, we strongly support the inclusion of these proposals in any property disposal legislation under consideration.

The following are some of our key proposals. We look forward to a continuing dialogue with the Committee around these recommendations.

- Significantly reduce the total number of properties required to go through the Title V process by excluding properties that homeless service providers would not want to use (e.g. properties that cannot be accessed due to national security, properties inside military facilities, contaminated properties).
- Require HUD, HHS, and GSA to develop an outreach plan and engage in ongoing and meaningful public outreach.
- Ensure that recipients will be able to use properties for all forms of permanent housing.
- Publish available properties online rather than in the Federal Register, and ensure that HUD, HHS, and GSA develop a “one-stop” electronic database and listserv to publicize available properties.
- Mandate that GSA establish uniform requirements for property transfers as opposed to the current practice of negotiating responsibility on a case-by-case basis. Examples of potential issues to be included are environmental cleanup or lead abatement.
- Require HUD to develop a grant program for construction and rehabilitation of Title V properties, funded from 5% of the net proceeds of federal property sales.

- Make additional HUD-owned properties available through Title V. Examples of such properties are the “HUD Homes” once insured by FHA and now the property of HUD following foreclosure.

Preserving Rights For Homeless Persons Under Proposals To Eliminate Title V

We believe that the case to preserve and strengthen Title V is strong. Three of the legislative proposals under consideration by this Committee—the Civilian Real Property Alignment Act proposed by the Office of Management and Budget, H.R. 1734, and H.R. 665—would make the goal of ending homelessness shared by the Federal government and the Law Center significantly more difficult to achieve. These proposals threaten the existence of a longstanding and successful anti-homelessness program without providing any evidence of the cost savings their proponents use to justify the damage to Title V. Consequently, we cannot support any of these proposals in their current form. The fourth proposal before the Committee today, H.R. 1205, does not threaten the rights of homeless service providers, and so we do not oppose it. However, we believe that H.R. 1205 could be improved if it were expanded to include the Law Center’s legislative proposals for real property reform. We will outline our primary concerns below, along with our recommendations for improvements.

Civilian Property Realignment Act: H.R. 1734 & Office of Management and Budget

The Civilian Real Property Alignment Act, H.R. 1734, like the White House Office of Management and Budget’s proposal, would both eliminate Title V rights and instead create a “BRAC-like” board or commission that would consider whether to have each surplus property either sold / demolished / otherwise disposed of or sent to HUD for a determination of whether it is suitable for homeless use and whether a homeless service provider wishes to acquire it.

- We are concerned that the proposed Board/Commission would have no representatives of homeless persons, service providers, or advocates. We recommend the addition of language providing that at least two members of the Board/Commission must be people with experience in advocacy on behalf of homeless persons or in providing housing or services to homeless persons.
- We are concerned that the proposed Board/Commission would result in the elimination of Title V’s most critical statutory right – the requirement that all federal surplus properties be considered for use to provide homeless assistance. Instead, the proposal would require (at minimum) a majority vote (4 out of 7 members) to agree to allow a property to be evaluated. A majority vote is too high of a burden for homeless service providers to meet. We recommend that a property must be offered to homeless service providers if a single member of the Board/Commission requests it. Consistent with their roles and responsibilities as Board/Commission members, is it highly unlikely that any presidential appointee to the Board/Commission would make a frivolous or dilatory request. Instead, it is anticipated that Board/Commission

members would only act in response to a reasonable request from a homeless service provider in the community where the property is located.

- We are concerned that the deadlines governing the proposed Board/Commission do not offer enough notice of the Board/Commission's planned actions to permit the development of well-informed public comment. We are also concerned by other deadlines, including the amount of time that homeless service providers would have to apply for properties. We recommend that 30 days' notice be required when the proposed Board/Commission publishes information about which properties it is evaluating, in advance of a public hearing to receive comments about those properties. We also recommend that the proposed Board/Commission be required to preserve Title V's 60-day period for homeless service providers to submit a notice of interest to apply for property.
- We are concerned that while the Civilian Property Alignment proposals would hurt local efforts to end homelessness in the name of revenue enhancement, those projected cost savings would not in fact occur. The Congressional Budget Office has concluded that creating a civilian BRAC would not result in more federal real property being sold than under the current legal framework, while establishing the Board/Commission and implementing its policies would cost \$420 million between 2012 and 2016.

While we do not favor the proposed BRAC-like approach, we have already presented these recommendations to Committee staff, in an effort to preserve minimal procedural guarantees for homeless service providers should this Committee elect to pursue legislation modeled on these proposals. We look forward to discussing them in more detail.

H.R. 665: Excess Federal Building and Property Disposal Act of 2011

H.R. 665 would create a pilot program granting the Director of the Office of Management and Budget sole discretion over the disposal of excess federal real property assets for a ten-year period. The program gives the Director the authority to identify and dispose of federal real property that no longer meets the needs of the government according to criteria developed by the Director. It explicitly suspends much of the existing legal framework for disposing of federal real property, including Title V.

- We are concerned that, rather than addressing the well-known problems with the real property disposal system with a permanent fix that integrates the solutions laid out by the Law Center above, this proposal creates a temporary demonstration program that fails to address the needs of homeless persons in any way.
- We are concerned by the level of discretion granted to the Director of the Office of Management and Budget in this proposal. The Director's incentives—for-profit sale—and those of homeless service providers seeking Title V properties

are at direct cross-purposes. Given that the Director’s power to exempt valuable properties from Title V would be unchecked for the duration of the pilot proposal, there is no reason to believe that homeless service providers would have any meaningful access to the limited number of genuinely useful properties that become excess during that ten-year period.

H.R. 1205: Federal Real Property Disposal Enhancement Act of 2011

H.R. 1205 would create a pilot program that exempts a narrow set of properties from the Title V process in order to expedite their sale. Specifically, it would apply only to properties that the federal government intends to demolish, located on land that the government intends to keep, and are inaccessible to the general public because of national security concerns, or properties that are uninhabitable. H.R. 1205 would not be harmful to homeless persons and the providers seeking to offer them housing and support services. Accordingly, we do not oppose it. However, we do have thoughts on how it could be improved.

- We are concerned that H.R. 1205 represents a missed opportunity to pass permanent, comprehensive improvements to Title V. While the properties exempted from Title V by H.R. 1205 are not likely to be of use to providers, integrating our additional proposed changes would streamline the program from the perspective of the federal government, while improving the application process for homeless service providers.
- We are concerned that H.R. 1205, like H.R. 665, responds to the issues surrounding real property disposal with a demonstration program. We understand how to make this process work better, and consequently favor a long-term solution that will not have to be revisited for many years.

Conclusion

Congress has recognized that the federal government has a “clear responsibility and ... existing capacity to meet the basic needs of all the homeless.”⁶ For nearly 25 years, Title V has granted homeless service providers the right to access unwanted property at no cost to landholding federal agencies. As the Committee takes a broad look at reforming the federal real property disposal process, there is no reason to retreat from this commitment, particularly when it is not necessary in order to meet the reasonable goal of increasing government efficiency.

Certainly, it would be counterproductive to eliminate this program in favor of establishing a new bureaucracy that the Congressional Budget Office has estimated would not only fail to raise the billions in revenue its proponents have claimed, but would

⁶ McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §11301(a)(6) (2010).

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Witness Biography **Maria Foscarinis**

Maria Foscarinis is founder and executive director of the National Law Center on Homelessness & Poverty, the legal advocacy organization that serves as the legal arm of the national movement to end homelessness. Ms. Foscarinis has advocated for solutions to homelessness at the national level since 1985, when she left her career at a major law firm, Sullivan & Cromwell, to become an advocate for homeless people. She is a primary architect of the Stewart B. McKinney Homeless Assistance Act, the first major federal legislation addressing homelessness. She has led numerous subsequent, cutting-edge initiatives to prevent and end homelessness, including protecting housing rights for domestic violence survivors and education rights for homeless children; increasing housing resources through vacant properties; and countering the criminalization of homelessness and poverty. She has initiated and led the national campaign to secure the human right to housing in the U.S., developed an initiative to protect tenants in the current foreclosure crisis, and advocated for and helped shape the federal plan to end and prevent homelessness. Ms. Foscarinis has led successful litigation to secure the legal rights of homeless persons, and writes regularly about legal and policy issues affecting homeless and poor persons. Ms. Foscarinis is an internationally known advocate and expert who is frequently quoted in the media, including the New York Times, Washington Post, USA Today, and the Huffington Post.

Committee on Oversight and Government Reform
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Maria Foscarinis

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

- The National Law Center on Homelessness + Poverty
- Founder and Executive Director

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature:

Maria Foscarinis

Date:

7.25.11