Statement of the National Law Center on Homelessness & Poverty

United States Senate, Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government Information,
Federal Services, and International Security

Federal Asset Management: Eliminating Waste by
Disposing of Unneeded Federal Real Property

June 9, 2011

Introduction

Chairman Carper, Ranking Member Brown, members of the Subcommittee - thank you for the opportunity to submit a statement for the record of this important 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. Our Executive Director, Maria 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, for use 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.

The U.S. government has committed itself to ending homelessness. 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."[1] 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."[2]

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 than it does to leave them sleeping on the street or even to provide them with temporary shelter.

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

Since 1987, Title V of the McKinney-Vento Homeless Assistance 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. In 2011, we estimate that programs based in Title V properties will provide services to 2.4 million homeless people from Alaska to Alabama.

- 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."

[1] Opening Doors: Federal Strategic Plan to Prevent and End Homelessness, United States Interagency Council on Homelessness, (June 2010).
[2] Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

- 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 2,313 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 6,711 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."

- In the words of Trevor Storrs, Executive Director of the Alaskan AIDS Assistance Association in Anchorage: "Title V – truly a life saver! The Alaskan AIDS Assistance Association (Four A's) received two surplus federal duplexes in 1991 during the height of HIV/AIDS related deaths. Thousands of volunteer hours went into renovating the properties to transfer it into a hospice for Alaskans living with HIV/AIDS. Many lost their housing and family when diagnosed. As the deaths began to decrease due to medical/medication advancements, the property was transformed into permanent housing. The quality of life for many individuals was greatly improved because of Title V."

- 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 Being Delayed By Title V

The Law Center understands the concerns of this Subcommittee, 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 can only be step one. In order to propose responsible solutions, this Subcommittee 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 as an allusion to Title V. However, the conclusion that Title V is unreasonably delaying 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 Subcommittee, we welcome 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 Subcommittee 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 will 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. That said, we understand that the Subcommittee is considering the legislative proposal recently put forth by OMB, a proposal that would eliminate Title V rights and instead create a "BRAC-like" board 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 cannot support this proposal in its current form. We will outline our primary concerns below, along with our recommendations for improvements.

- We are concerned that the proposed Board 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 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 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 requests it. Consistent with their roles and responsibilities as Board members, is it highly unlikely that any presidential appointee to the Board would make a frivolous or dilatory request. Instead, it is anticipated that Board 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 do not offer enough notice of the Board'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 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 be required to preserve Title V's 60 day period for homeless service providers to submit a notice of interest to apply for property.

While we do not favor the proposed BRAC-like approach, we have already presented these recommendations to Subcommittee staff, in an effort to preserve minimal procedural guarantees for homeless service providers seeking to obtain surplus federal property to provide housing and services. We look forward to discussing them in more detail.

Conclusion

Congress has recognized that the federal government has a "clear responsibility and…existing capacity to meet the basic needs of all the homeless."[3] 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 Subcommittee 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.

We welcome the opportunity to continue working with this Subcommittee on legislation that would preserve the ability of homeless service agencies to provide additional affordable housing and supportive services, while increasing efficiency in the federal property disposal process. Such legislation would benefit all homeless persons and all other key stakeholders.

Thank you for allowing us to submit this statement. Should you wish to discuss it further, please contact our Policy Director, Jeremy Rosen, at (202) 638-2535 or jrosen@nlchp.org.

[3] McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11301(a)(6).