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# Conveying Unneeded Federal Real Property to Tribal Entities: Background and Issues for Congress

The General Services Administration (GSA) is responsible for the government-wide procurement of federal goods and services and the acquisition, management, and disposal of federal real property. *Federal real property* generally includes all federally owned buildings, structures, and land, except lands in the public domain, mineral lands, national forest land, national park land, and other lands previously withdrawn or reserved from the public domain (40 U.S.C. §102).

Federal agencies hold an extensive real property portfolio to help fulfill their diverse missions. As federal agencies' missions change over time, however, so do their property needs. In FY2023, the 24 largest landholding agencies identified 5,240 buildings as either not utilized or underutilized (see Table 8 in GSA's FY2023 report). *Federal real property disposal* is the process by which federal agencies identify unneeded property and then GSA transfers, donates, or sells that property on their behalf. Federal land management agencies, among other agencies, also have authorities for federal real property disposal.

This In Focus discusses several issues of congressional interest relating to federal real property disposal. First, it provides an overview of the GSA processes for federal real property disposal to nonfederal entities, including tribal entities such as *federally recognized Tribes* ("Tribes") and *tribal organizations*. Next, it discusses some related issues of focus for tribal entities. Finally, it outlines selected relevant past and current legislative proposals and options.

## GSA's Federal Real Property Disposal Process for Nonfederal Entities

Federal agencies are required to continually survey real property under their control to identify and report any *excess property* (property no longer needed to carry out their missions) to GSA. GSA uses the following process outlined in 41 C.F.R. §102-75 to dispose of that property:

1. **Transfer of excess property to federal agencies** at fair market value. If federal agencies do not express interest, the excess property is designated as *surplus property*.
2. **Conveyance of surplus property to state and local governments and qualified nonprofits** at less than fair market value—even no cost—to accomplish public purposes specified in statute.
3. **Negotiated sale option for state and local governments to purchase surplus**

**property** at fair market value to create public benefits other than those specified in statute.

4. **Public sale option** for the public to purchase surplus property through either brokers or online auctions.

In addition, in 2016, Congress established the Public Buildings Reform Board (PBRB) to recommend excess property for disposal (P.L. 114-287). The Office of Management and Budget (OMB) must approve the PBRB's recommendations for each round before federal agencies may begin disposing excess properties.

For more information about GSA's disposal authorities and processes, see CRS Report R47722, *Overview of the General Services Administration: Acquisition Services and Real Property Management*, by Dominick A. Fiorentino and Garrett Hatch.

## GSA's Federal Real Property Disposal Process for Tribes and Tribal Organizations

The history of the relationship between the United States and Tribes is complex. The federal government has a *federal trust responsibility* to protect tribal treaty rights, lands, assets, and water resources on behalf of Tribes and tribal citizens (*Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942)). The Bureau of Indian Affairs (BIA), an agency within the Department of the Interior (DOI), plays a leading role in carrying out this responsibility, including holding land in trust for Tribes and tribal citizens.

Due to their unique status, Tribes and tribal organizations follow a different process for acquiring excess property than other nonfederal entities. DOI is required to provide Tribes and tribal organizations, at least annually, a list of excess property. A specific excess property is eligible for transfer to a Tribe or tribal organization if it meets at least one of the following criteria:

- The excess property is located within a Tribe's reservation. In that case, BIA must request, and GSA must transfer, that property at no cost to the Tribe. Due to historical reasons, there are special procedures for properties in Oklahoma. Once transferred, BIA holds the land in trust for the Tribe. DOI is responsible for reimbursing the agency for the property transfer (40 U.S.C. §523 and GSA Order PBS P 4000.1, ch. 2(12)(a)); or
- The excess property may help a Tribe or tribal organization carry out a contract or grant under the Indian Self-Determination and Education Assistance Act

(ISDEAA; 25 U.S.C. §§5301 et seq.). In this case, BIA will consider the request and may seek a property transfer for a fee equal to fair market value unless a fee waiver is approved (by GSA and OMB). Once transferred, the property may be held in trust or owned by the Tribe or tribal organization (25 U.S.C. §5324(f), 25 C.F.R. §900.104, 25 C.F.R. §900.105, and GSA’s *Tribes and Tribal Organizations: Guide to Using GSA Solutions*).

Tribes and tribal organizations have, at times, successfully acquired excess property using this process. For example, a CRS analysis of GSA’s Federal Real Property Public Data Set shows non-legislated excess property transfers to Tribes in FY2020 (South Dakota) and in FY2021 (Alaska).

For more information about tribal lands, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray.

For more information about ISDEAA, see CRS Infographic IG10057, *Tribal Self-Determination Authorities*, by Mariel J. Murray.

### Selected Tribal Issues

Tribes and tribal organizations may pursue acquisition of excess property for various reasons. Some Tribes have expressed interest in acquiring excess property for public purposes such as facilities or equipment. However, unlike state and local governments, Tribes and tribal organizations are able to acquire excess property at less than fair market value or no cost only if it is on a tribal reservation or will be used in an ISDEAA contract or grant.

In addition, Tribes have requested excess property transfers to settle historical claims. For example, advocates for the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation have expressed interest in certain Bureau of Reclamation (BOR)-managed lands because they claim that these lands are historically part of the reservation. The Tribes have already reacquired some of these lands. In 2024, one media source reported that BOR was considering designating about 60,000 acres as unnecessary to their needs and that some of the property could potentially be transferred to the Bureau of Land Management or BIA (for the Tribes).

Some Tribes also have expressed interest in influencing federal decisions regarding the disposal of excess property. For example, many Northwest Tribes, Alaska Natives, and Members of Congress opposed the proposed disposal of a National Archives and Records Administration facility in Seattle, WA, on the grounds that the facility’s tribal records would have been transferred to California and Missouri, making the records largely inaccessible to Tribes located in and around Washington State. Furthermore, many Tribes claimed that PBRB had not adequately consulted with them before making the recommendation to convey the facility.

For more information about federal-tribal consultation, see CRS Report R48093, *Federal-Tribal Consultation: Background and Issues for Congress*, coordinated by Mariel J. Murray.

### Issues and Options for Congress

Congress often faces questions regarding the nature and extent of GSA’s disposal authorities. The interests and parties involved in federal real property management vary widely. Some stakeholders seek to maintain or enlarge the federal real property portfolio, whereas others seek to divest varying portions of the portfolio to nonfederal ownership. There also may be competing stakeholder interests regarding the appropriate uses of conveyed property.

Congress could consider whether to maintain, repeal, or amend general authorities for conveying excess or other federal property to Tribes or tribal organizations. With regard to amendment, Congress has debated adding Tribes to the list of entities eligible to receive federal real property under the GSA process as well as other disposal authorities. For example, P.L. 117-328, Division DD, the Consolidated Appropriations Act, 2023, amended the Recreation and Public Purposes Act to add tribal entities to the list of entities eligible to purchase or lease public lands for recreation or public purposes. In addition, in 2024, the GSA Disposal Process Tribal Parity Act of 2024 (S. 3564/H.R. 7663) proposed amending the conveyance process to enable Tribes to participate in the surplus property process alongside state and local governments and qualified nongovernmental organizations. Certain Members of Congress supported this legislation for potentially ensuring more equity among nonfederal stakeholders, preventing waste, increasing oversight, and saving taxpayer money. At the same time, it could create competition for surplus federal real property among nonfederal entities. In addition, the proposal may allow Tribes to acquire properties off reservation, which could lead to jurisdictional conflicts between tribal and non-tribal entities.

In addition, on a case-by-case basis, Congress could continue to authorize certain agencies to convey properties to Tribes to meet specific needs. For example, Section 8021 of the FY2023 Department of Defense Appropriations Act authorized the Air Force to convey relocatable military housing units at specific bases in specific states to Tribes.

Whether and how federal agencies should engage with Tribes during the GSA property disposal process is another issue. One option is to continue allowing federal agencies to engage with Tribes at their discretion. Alternatively, Congress could require in law that federal agencies engage with Tribes during the GSA disposal process. In the 117<sup>th</sup> Congress, the Assuring Regular Consultation To Have Indigenous Voices Effectively Solicited Act (S. 981/H.R. 4386) proposed requiring federal-tribal consultation before the sale or transfer of federal real property. In addition, the act stated that this property could not be disposed if that would “substantially reduce” or eliminate tribal access to federal agency services. Requiring consultation would likely provide more opportunities for tribal input, though it could also delay the disposal process and add to the backlog of unused federal real properties.

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