

VA SUPPLEMENT CHAPTER 11: **PROSPECTUS-LEVEL LEASES**

Chapter 11

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Part 1: Introduction

U.S. Department of Veterans Affairs (VA's) major leases are equivalent to General Services Administration (GSA's) prospectus-level leases and follow the same requirements.

The term "*prospectus 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 threshold in [38 U.S.C. § 8104\(a\)\(3\)\(B\)\(i\)](#)⁶ amount for the fiscal year in which award is to be made, requiring the prior submission and approval of a prospectus.

Contemplated leases calling for a stepped rent or a change in the base rent, must be "levelized" in accordance with [Chapter 11 of GSA's LDG](#) to determine whether a lease is above or below this threshold. A simplified spreadsheet for levelizing rent is available in [GREX Template Management System](#) for delegated agencies.

Office of Construction and Facilities Management's (CFM's) Office of Real Property (ORP) Lease Execution Division (LE) and Lease Delivery Division (LD) divisions are responsible for executing and designing and constructing, respectively, delegated Major Leases. In addition, CFM Office of Facilities Planning (OFP), Office of Enterprise Management (OAEM) and Office of General Counsels (OGC's) Real Property Law Group (RPLG) provide support, reviews, and various approvals for VA's Major Leases in lieu of GSA's Public Building Service (PBS) Office of Portfolio Management and Customer Engagement or PBS Office of Leasing as referenced in GSA's LDG.

Please see the Addendum in the Introduction of this Supplement to review VA's roles, responsibilities, and authorities related to major leases. Appendix A also includes related terminology.

When used throughout this VA Supplement Chapter, "Reserved" means the information in [GSA's LDG](#) applies to VA's leasing program without further supplemental information.

Part 2: Statutory Authority

VA's major medical facility leases are required to follow [38 U.S.C. § 8103](#) and [8104](#).

Proper application of [38 U.S.C. § 8104](#) requires consistent adherence to the legal definition of "average annual rent." "Average annual rent" means all costs that are amortized and paid to the lessor through the lease agreement except for operating expenses. Importantly, average annual rent is the functional equivalent to "unserved

⁶ [Pub. L 117-168 § 703\(b\)](#) amended VA's threshold to an average annual rent equal to or greater than GSA's threshold under [40 U.S.C. § 3307\(a\)](#), which is subject to adjustment in accordance with [40 U.S.C. § 3307\(h\)](#). GSA's annual prospectus threshold for FY2024 is \$3.613M.

rent”. It includes allowable Tenant Improvements (TIs) if amortized. It does not include TI if paid in a lump sum.

Contemplated leases calling for a stepped rent or a change in the base rent, must be “levelized” in accordance with [Chapter 11 of GSA’s LDG](#) to determine whether a lease is above or below this threshold. A simplified spreadsheet for levelizing rent is available in [GREX Template Management System](#) for delegated agencies.

Part 3: Prospectus Requirement

VA’s prospectus threshold for major medical facility leases is detailed in [38 U.S.C. § 8104\(a\)\(3\)\(B\)\(i\)](#)⁷. CFM’s ORP, Veterans Health Administration (VHA), and OAEM are responsible for developing VA’s prospectus documents to support VA’s annual budget request.

For VHA’s leases, pursuant to [38 U.S.C. § 8104](#), VA must obtain approval via adopted resolutions from the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives in addition to GSA’s U.S. Senate Committee on Environment and Public Works and U.S. House of Representatives Committee on Transportation and Infrastructure resolutions approving any lease for use as a new medical facility where the average annual rent is equal to or greater than the threshold as defined under [38 U.S.C. § 8104\(a\)\(3\)\(B\)\(i\)](#)¹⁷, regardless of delegation by GSA. The threshold for FY2024 is \$3.613M and is subject to annual adjustments each fiscal year thereafter.

It is imperative that the prospectus’s scope and size be as accurate as possible. Exceeding the scope of a Committee resolution could nullify the lease. While VA can notify its Committees pursuant to [38 U.S.C. § 8104\(h\)](#), if the lease to be awarded would exceed the unserviced annual rent or the cost for medical and other alterations, a new GSA Committee resolution is required because all scope and size parameters are locked. OGC’s Real Property Law Group (RPLG) should be consulted for questions related to potential scope or cost changes to major leases.

a. Determining Whether a Prospectus is Required

To determine average annual rent (or unserviced rent) for prospectus threshold computation⁸:

1. Subtract only operating expenses paid directly to the lessor from the total annual rent due under the Lease Agreement.
2. Include any amortized TI costs.

⁷ [Pub. L 117-168 § 703\(b\)](#) amended VA’s threshold to an average annual rent equal to or greater than GSA’s threshold under [40 U.S.C. § 3307\(a\)](#), which is subject to adjustment in accordance with [40 U.S.C. § 3307\(h\)](#). GSA’s annual prospectus threshold for FY2024 is \$3.613M.

⁸ Computations for determining whether a lease meets the prospectus threshold should not be confused with determining Total Lease Contract Value. Refer to Appendix A for further information.

3. Real estate taxes are a component of net rent and must be included in the proposed rent that is being compared to the prospectus threshold.
4. Do not include TI if paid in lump sum.

A medical space lease action requires a prospectus when net average annual rent for the term of the lease (including option periods and excluding the cost of services) equal to or greater than the appropriate dollar threshold described in title [40 U.S.C. §3307\(a\)](#), which is subject to adjustment in accordance with title [40 U.S.C §3307\(h\)](#). The prospectus threshold applied to a particular lease is the prospectus threshold in effect during the fiscal year of lease award.

Contemplated leases calling for a stepped rent or a change in the base rent, must be “levelized” in accordance with [Chapter 11 of GSA’s LDG](#) to determine whether a lease is above or below this threshold. A simplified spreadsheet for levelizing rent is available in [GREX Template Management System](#) for delegated agencies.

b. When to Evaluate & Reevaluate Whether a Prospectus is Required

VA leasing professionals must confirm lease terms remain within the approved prospectus and delegation limits prior to signing and awarding a lease or lease amendment.

In the event a non-prospectus lease procurement requirement later exceeds the prospectus threshold due to changes in market conditions, incorrect estimates or unforeseen conditions, VA leasing professionals must contact CFM ORP for further assistance.

c. When to Submit a Prospectus

A lease action requires a prospectus when net average annual rent for the term of the lease (including option periods and excluding the cost of services) equal to or greater than the appropriate dollar threshold described in title [40 U.S.C. §3307\(a\)](#), which is subject to adjustment in accordance with title [40 U.S.C §3307\(h\)](#). The prospectus threshold applied to a particular lease is the prospectus threshold in effect during the fiscal year of the lease award.

Contemplated leases calling for a stepped rent or a change in the base rent, must be “levelized” in accordance with [Chapter 11 of GSA’s LDG](#) to determine whether a lease is above or below this threshold. A simplified spreadsheet for levelizing rent is available in [GREX Template Management System](#) for delegated agencies.

Upon Strategic Capital Investment Planning (SCIP) approval, VA medical facility major leases that exceed the prospectus threshold require submission of prospectuses and are subject to approval via adopted resolutions from the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives in addition to GSA’s U.S. Senate

Committee on Environment and Public Works and U.S. House of Representatives Committee on Transportation and Infrastructure resolutions. This process along with delegation from GSA can add up to a year to the lease execution timeline. CFM's ORP, VHA, and OAEM are responsible for developing VA/GSA lease prospectus documents to support VA's annual budget request and GSA's annual submission cycle. OAEM is responsible for reviewing and communicating prospectus packages to GSA and OMB.

Facilities that anticipate needing a lease that meets or exceeds VA's prospectus lease threshold should contact CFM's OFP, CFMPlanning@va.gov, as soon as identified per the annual SCIP Call memo to help develop the lease requirements and begin the required planning process.

d. Submittal Requirements

CFM ORP, VHA, and OAEM are responsible for developing VA's prospectus documents and including them in VA's annual budget request.

Upon VA's annual Budget submission by the President to Congress, which typically occurs in February, CFM ORP's LE will begin working the major leases included in VA's Budget Request. This includes preparing RLP packages and upfront design based on prospectus packages.

e. Identify Congressional Districts and Delineated Areas in the Prospectus

Reserved.

f. Lifecycle Planning and Milestones

Reserved.

Part 4: Prospectus-Level New Building and Lease Construction

Reserved.

Part 5: Advertising

Subject to the availability of funds, pre-solicitation notices can be posted once resolutions are transmitted by GSA to GSA's Committees. GSA delegation must be received prior to issuance of the RLP.

Part 6: Adopted Resolutions and Commencement of Procurement

CFM ORP LCOs may award a major lease only after the resolutions are adopted by VA and GSA Committees, provided the lease terms and conditions are consistent with the resolutions and GSA delegation, and all other requirements are satisfied, including

any necessary reviews and certification of funds.

Part 7: Request for Lease Proposals & Lease Documentation Requirements

OGC RPLG and OAEM reviews and concurrences are required for the lease file.

Part 8: Renewal and Purchase Options

VA's statutory authority was amended in 2022 to provide the authority for VA to obligate and expend funds to exercise purchase options included in any **prospectus level-lease**. Leases involving new construction meeting this threshold are included in this authority.

VA leasing professionals should contact [CFM ORP, Policy and Programs Division](#) for further information related to use of purchase options.

Part 9: Consistency with the Committee's Resolutions

For major leases, cannot exceed the parameters of the committee resolutions including, but not limited to, estimated maximum Net Usable Square Feet (NUSF), estimated maximum Rentable Square Feet (RSF), proposed maximum leasing authority, delineated area, number of official parking spaces, scoring classification, estimated unserviced rental rate per NUSF, and estimated total unserviced annual cost. Resolutions can contain parameters not referenced in the original prospectus that need to be adhered to.

Part 10: Post-award Monitoring and Changes

Any changes on major level leases require compliance with CFM's Change Management Policy and/or VA's updated Capital Program Requirements Management Process (CPRMP) Policy. The current CPRMP is the review of proposed project scope (space, critical programs and cost) changes that:

1. Result in size increases or decreases of 5,000 ANSI/BOMA Occupant Area square feet (ABOA SF) for Major Leases throughout the project lifecycle regardless of cost;
2. Add or delete a critical program in its entirety;
3. Result in cost increases, whether VA or market driven, with cumulative impact greater than \$5,000,000 in total lease value (TLV); or
4. Change existing Congressionally authorized approved (Major Lease) scope parameters not specifically addressed above.

For updated versions of CFM's Policies please visit [CFM SharePoint](#).

Part 11: Interim Leases

In FY 2022, legislative changes authorized interim leasing actions for VA's major leases or replacement leases for which a prospectus has been submitted.⁹ This change eliminates the need for VA to include language in prospectus packages addressing interim leasing actions.

For VA's prospectus packages submitted prior to August 10, 2022, the following language should have been included to allow for interim leasing actions:

“VA will coordinate with GSA to execute such interim leasing actions as are necessary to ensure continued housing of VA services prior to the effective date of the new lease. It is in the best interest of the Government to avert the financial risk of holdover tenancy.”

Part 12: Scoring Risks

OAEM provides training and current approved templates for VA's lease scoring analysis, available at [Enterprise Lease Management Tool – CO Resources - All Documents \(sharepoint.com\)](#).

Part 13: Prospectuses for Alterations in Leased Space

GSA's threshold amount for post-Government occupancy alterations in leased space applies to VA leases because [40 U.S.C. § 3307](#) applies to all leases (new and existing) independently of application of [38 U.S.C. § 8104](#). By virtue of VA's delegated lease authority, VA must submit a prospectus and obtain a resolution from GSA's U.S. Senate Committee on Environment and Public Works and U.S. House Committee on Transportation and Infrastructure for certain “alterations” to existing leases. This requirement arises in two situations:

- First, where the estimated cost of construction exceeds the threshold for lease alterations referenced in [Federal Management Regulation § 102-73.35](#) and specific to “[a]n appropriation to alter any building, or part of the building, which is under lease by the Federal Government for use for a public purpose . . .” as set forth in [40 U.S.C. 3307\(a\)\(3\)](#).
- Second, if “alterations” to an existing lease causes the average annual rent to exceed the prospectus lease threshold, VA should submit a prospectus and seek a resolution.
 - Contemplated leases calling for a stepped rent or a change in the base rent, must be “levelized” in accordance with Chapter 11 of GSA's LDG to determine whether a lease is above or below this threshold. A simplified spreadsheet for levelizing rent is available in [GREX Template](#)

⁹ Refer to [Public Law 117-168, §703\(d\)](#), codified at [38 U.S.C. § 8104\(j\)](#) for further information.

Management System for delegated agencies.

The prospectus requirement applies to existing space alterations exceeding the annually adjusted threshold. In such cases, VA is required to submit an alteration in lease space prospectus along with supporting documentation prior to the execution of an amendment. CFM ORP, VHA, and OAEM are responsible for developing VA's prospectus documents and including them in VA's annual budget request and GSA's annual submission cycle. VA leasing professionals must contact CFM ORP to develop:

- Prospectus
- Scoring Analysis
- Cost Estimate for Alterations
- A-94 Analysis demonstrating the proposed project is the most effective way to meet the need

GSA's limitation on lump sum payments does not apply to VA as a delegated agency.

The prospectus requirement applies to expansion space alterations when the construction cost of required renovations to the existing leased space to accommodate or connect the expansion space exceed the annually adjusted threshold. For FY2024, the lease alteration threshold is \$1,806,500.