

TITLE V OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT SUPPORTS CRITICAL SERVICES FOR AMERICANS EXPERIENCING HOMELESSNESS

Signed into law in 1987, the McKinney-Vento Homeless Assistance Act remains the only major federal legislation to address homelessness in America. Title V of the Act provides offers significant federal support to efforts to combat homelessness by providing homeless service providers with an effective “right of first refusal” for federal property deemed to be excess, surplus, unutilized or underutilized, and that might be suitable for use by homeless assistance organizations. Each year, more than 2 million Americans receive assistance through Title V.

While the Act has been enhanced significantly over the past 30 years, many longer-term, broader measures to reduce homelessness were never enacted. As a result, homelessness remains a crisis in the United States, and has worsened in recent years. Despite the success of the Title V program—just one component of the McKinney-Vento Act—and recent enhancements under the 2016 Federal Asset Sale and Transfer Act (“FASTA”), a number of policy challenges continue to impede the program from reaching its full potential.

The Homelessness Crisis in the United States Has *Worsened* Over the Past Decade, Despite the End of the Great Recession.

- Close to 1.4 million school children were homeless during the 2016-2017 school year. Almost 2.5 million children overall—1 in 30—were homeless in 2013.
- Reports of homeless encampments grew 1,342% between 2007 and 2017, again persistently trending upward despite the end of the recession.
- As of 2018, according to the Department of Housing & Urban Development, on a single night in the United States, 553,000 individuals were sleeping in shelters, transitional housing, and in outdoor locations not meant for human habitation. Of that total number, nearly one-third were in the latter category, living without any indoor shelter.

Title V of the McKinney-Vento Homeless Assistance Act Uses Surplus Federal Properties to Provide Shelter and Services to Millions of Americans—at No Taxpayer Cost

- Title V makes HUD responsible for leading a cross-agency effort to identify unneeded federal properties suitable for use by homeless assistance organizations. Once these properties are identified, homeless service providers have a right of first refusal to acquire the excess property.
- Title V has enabled service providers and local government agencies to acquire and use surplus property to provide meals, shelter, housing, job training, medical care, and mental health treatment for homeless Americans throughout the country.
- Title V is a proven vehicle for assisting America’s homeless with no cost to taxpayers. In fact, Title V *saves* taxpayer dollars by reducing operations and maintenance costs associated with unused and unneeded federal properties.

FASTA Made Significant Improvements to Title V That Will Ensure More Homeless Service Providers Can Put Federal Properties to Homeless Use

- The Federal Asset Sale and Transfer Act (“FASTA”), enacted in 2016, made three significant improvements to Title V.

- First, FASTA shortened and bifurcated the Title V application process. Under the new procedure:
 - Applicants submit an initial application laying out the description of the homeless services that would be provided, the need for those services, and the experience of the applicant that demonstrates the ability to provide such services.
 - Once the Secretary of Health and Human Services approves an initial application, applicants have 45 days to complete a final application that sets forth a “reasonable plan to finance the approved program.” This process lowered the burden on applicants from the prior process, which, under HHS regulations, required a showing that the applicant “has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.”
- Second, FASTA provided applicants with flexibility in providing services by allowing applications discretion to take possession of Title V properties by lease or by deed.
- Third, the Act clarified that permanent housing, with or without supportive services, is an eligible use of property acquired through Title V. While permanent housing with supportive services is an important solution to the problem of chronic homelessness, many homeless people with no substance abuse problems, such as violence victims, simply need housing for longer than local shelters can provide, but do not require supportive services.

Despite FASTA’s Needed Changes to Title V, Additional Challenges Prevent the Program from Reaching Its Full Potential

- Since FASTA became law, Title V application submissions and approvals have increased. However, the overall approval rate is still abysmally low. Between January 2017 and today, a total of 24 applications were submitted—only seven were approved, and sixteen were denied. More specific statutory parameters regarding application review would help to improve the success of the program.
- Of the seven approved applications, some involved only short-term leases. For example, in the case of San Francisco, application for a short-term lease was part of the City’s strategy to navigate unnecessary barriers to affordable housing development under Title V regulatory law.
- Recently HHS has denied a number of applications based on the new financing standard established by FASTA, finding that they do not demonstrate a “reasonable plan to secure financing.”
 - Denials of applicants like Colorado Coalition for the Homeless and the City of Seattle suggest that HHS has sought proof that financing for a proposed project is actually committed by the time of application submission, rather than the “reasonable plan to obtain financing”—a lower standard established under FASTA.
 - HHS has also refused to let applicants supplement the financial portion of their applications. This puts non-profits in an impossible position. It is unrealistic to expect that non-profits can get committed funding for a program that is contingent on property it may or may not receive - especially on such a short timeframe.
 - Moreover, affordable housing developments often rely on sources of funding that cannot be committed in advance, such as Low-Income Housing Tax Credits and city budget allocations. As a result, even organizations with a history of running and financing similar projects in the past are denied in their applications.

- Title V applicants also face two additional hurdles not addressed by FASTA:
 - First, HHS regulations require a successful applicant to place the acquired property “into use” within 12 to 36 months. *See* 45 C.F.R. § 12.3(c). HHS’s interpretation of this rule requires applicants have the proposed program fully operable, and use the entirety of the transferred property, within no more than three years, or the property will be subject to reversion to the government. Affordable housing development typically takes at least five years from acquisition to completion. Despite FASTA’s explicit approval of affordable housing projects, the time limit on development of a transferred property significantly limits the ability of service providers to use Title V properties for housing, which is the single largest unmet need among the homeless population.
 - Second, HHS has, by policy, excluded all programs from Title V eligibility if they also serve populations who do not meet a narrow definition of homelessness under the Act, specifically excluding “services provided to non-homeless, low-income individuals.” This limits use of properties for services such as health care and food services which often serve both homeless and at-risk populations.
- Congress and the Administration should work together to address these critical areas of Title V to ensure the program works effectively and efficiently for the benefit of people experiencing homelessness.

About the National Law Center on Homelessness and Poverty

The National Law Center on Homelessness & Poverty is a 501(c)(3) nonprofit organization based in Washington, D.C. The Law Center is the only national advocacy organization dedicated solely to using the power of the law to end and prevent homelessness in America. With the support of a large network of pro bono lawyers, we use our legal expertise to help pass, implement and enforce laws addressing the immediate and long-term needs of those who are homeless or at risk.

We work with federal, state and local policymakers to draft laws that prevent people from losing their homes and to help people out of homelessness. We have been instrumental in enacting numerous federal laws, including the McKinney-Vento Act, the first major federal legislation to address homelessness. We helped enact the federal program that makes vacant government properties available at no cost to non-profits for use as facilities to assist people experiencing homelessness, and we ensure it is enforced including through litigation. We’ve won federal protections for tenants affected by the foreclosure crisis.

We aggressively fight laws criminalizing homelessness and advocate for proactive measures to ensure that those experiencing homelessness have access to housing, jobs, and public benefits even though they have no address so that they can escape homelessness.

We work to improve access to housing for domestic violence survivors and their children and we were instrumental in adding landmark housing rights amendments to Violence Against Women Act.

We protect the right of homeless children to stay in school and get the support they need to succeed.

Our vision is for an end to homelessness in America. A home for every family and individual will be a right and not a privilege; a reality, not just a goal.