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**Energy Production and Development  
Enhanced Use Leasing  
Legal & Policy Issues**

# ***Air Force Real Property Agency***

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*Integrity - Service - Excellence*



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**U.S. AIR FORCE**

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# Key Topics

- Legal Requirements
- Practical And Policy Issues
- Integration of EUL's Into Energy Program

# Leasing

- 10 USC 2667 Applicable
  - Allows Leasing of Component and Defense Agency Property
  - Subject to Statutory Requirements
  - Special Legislation May Vary Requirements
- No Statutory Distinction Between EUL and Other Leases
  - Enhanced Use Lease (EUL) Is An Administrative, Not Statutory Term
  - Different Agencies May Use Term Differently
- Leasing is an Asset Management Tool

# Major 10 USC § 2667 Requirements

- Property under the control of the Secretary of the Air Force
- Non-excess
- Consideration that is equal to, or greater than, fair market value
- Consideration may be either in-kind or cash
- Consideration may only be used as provided by statute
- Competition required
- For larger leases (EULs generally), Congressional Notification is required before solicitation
- Congressional Notice before lease execution
- Secretarial findings required before lease greater than 5 years executed

# Major Legal Issues

- Non-Excess
- Fair Market Value
- Competition
- Congressional Reporting
- NEPA and Other Environmental Issues



# Policy Issues & Practical Problems

- Public Interest
- Term
- Mission Compatibility
- Form of Consideration



# EULs in the AF Energy Toolbox

- Third party financing opens up opportunities for AF installation
  - Limited AF funds makes third party financing critical to a successful energy program
- EUL consideration is available for energy investment on the installation
- EUL project output may be available in local market for surety augmentation, for example, in case of grid outages
- EUL project may provide a source to satisfy installation requirements for purchased power, where appropriate and authorized

# Acquisition of Energy

- Acquisition of energy from project presents challenges
- Independent Statutory Authorities
- Independent Acquisition Process and Authority
- OMB Scoring

# Wrap-Up

- All DoD Leases Are Subject To 10 USC 2667
- Leasing Is An Effective Asset Management Tool
- Leasing Is Subject to Environmental Requirements
- Properly Used EULs May Be a Key Component Of Energy Strategy

# EUL Issues

**Questions?**