

## **Preliminary Policy on Property Management**

### **Reference:**

Workforce Innovation and Opportunity Act (WIOA), Sec. 170, 184, 192, and 194; WIOA Notice of Proposed Rulemaking (WIOA NPRM), 20 CFR § 683.235; Revised Continuing Appropriations Resolution, 2007; 29 CFR Part 97; 29 CFR Part 95; and TEGL 3-07.

### **Background:**

All entities that received funds issued on or after December 26, 2014, are bound by the property management requirements of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule (Uniform Guidance).

All entities that received funds issued prior to December 26, 2014, and which will have funding actions, allotments, or incremental funding actions taking place after December 26, 2014, are bound by the property management requirements of the Uniform Guidance for the new funds only.<sup>1</sup>

All entities that received funds issued prior to December 26, 2014, and which will not have additional funding actions taking place after December 26, 2014, may continue to follow the terms and conditions as outlined in their award documents, including the property management requirements of 29 CFR § 97.32 (for governmental agencies) and 29 CFR § 95.34 (for institutions of higher education (not a part of State government), hospitals and other nonprofit organizations, and commercial entities). These recipients may request a formal grant modification to replace the existing regulations with the Uniform Guidance should they choose to standardize their internal procedures as all new funding will be subject to the new regulations.<sup>2</sup>

### **Action:**

This policy takes effect immediately.

### **Policy:**

#### **Uniform Guidance Definitions**

“Non-Federal entity” means a State, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.<sup>3</sup> The City of Omaha, City of Lincoln, State of Nebraska, Heartland Workforce Solutions (HWS), and Goodwill Industries, as subrecipients of WIOA funds, are considered “non-Federal entities.”

“Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a federal program.<sup>4</sup> If the non-Federal entity for the local area provides a subaward to a subrecipient to carry out part of a federal program, the subrecipient is considered

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<sup>1</sup> <http://doleta.gov/grants/UniformGuidance.cfm>

<sup>2</sup> Id.

<sup>3</sup> 2 CFR § 200.69

<sup>4</sup> 2 CFR § 200.74, A-133 § \_\_\_\_\_.105

a “pass-through entity.” The State of Nebraska, City of Omaha, and HWS are pass-through entities.

“Subrecipient” means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.<sup>5</sup> HWS, as a non-Federal entity that receives a subaward from the City of Omaha, is a subrecipient. Goodwill Industries, as a non-Federal entity that receives a subaward from HWS, is also a subrecipient.

### Equipment

#### Equipment Acquired with Grant Funds Received Prior to December 26, 2014

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.<sup>6</sup>

#### Equipment Acquired with Grant Funds Received on or after December 26, 2014

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the grantee or subgrantee/non-Federal entity for financial statement purposes, or \$5,000.<sup>7</sup>

### *Title*

Title to equipment acquired with grant funding received prior to December 26, 2014, shall vest upon acquisition in the grantee or subgrantee/non-Federal entity, subject to conditions of 29 CFR § 97.32 or 29 CFR § 95.34, as applicable.

Title to equipment acquired with grant funding received on or after December 26, 2014, shall vest upon acquisition in the grantee or subgrantee/non-Federal entity, subject to the obligations and conditions set forth in the Property Standards section of Subpart D – Standards for Financial and Program Management of the Uniform Guidance. Unless a statute specifically authorizes the Federal agency to vest title on the grantee or subgrantee/non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the grantee or subgrantee/non-Federal entity subject to the following conditions:

- Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
- Not encumber the property without approval of the Federal awarding agency or pass-through entity.
- Use and dispose of the property in accordance with § 200.313(b), (c), and (e) of the Uniform Guidance.<sup>8</sup>

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<sup>5</sup> 2 CFR § 200.93

<sup>6</sup> 29 CFR § 97.3

<sup>7</sup> 2 CFR § 200.33

<sup>8</sup> 2 CFR § 200.313(a)

## *State*

The State shall use, manage, and dispose of equipment acquired under a federal grant in accordance with State laws and procedures.<sup>9</sup> This allows for consistency by the State in handling equipment acquired with either federal funds or State funds.

### **Use Standards**

#### For Recipients and Subrecipients Other than the State

When equipment is acquired with federal grant funds received by governmental recipients/subrecipients other than the State prior to December 26, 2014, then these use standards must be followed:

- Equipment shall be used by the grantee or subgrantee/non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency.
- The grantee or subgrantee/non-Federal entity shall make equipment available for use on other projects or programs currently or previously supported by the federal government, provided such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees shall be considered if appropriate.
- The grantee or subgrantee/non-Federal entity may not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal statute.
- When acquiring replacement equipment, the grantee or subgrantee/non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.<sup>10</sup>

When equipment is acquired with grant funds received by non-governmental recipients prior to December 26, 2014, then these use standards must be followed:

- The recipient shall not use equipment acquired with federal funds to provide services to non-federal organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by federal statute.
- Equipment shall be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds and shall not encumber the property without approval of the grant officer. When no longer needed for the original program or project, the recipient shall use the equipment in connection with its other federally, sponsored activities. Activities sponsored by the agency funding the original project shall receive first priority for use and then the equipment may be used for activities sponsored by other federal awarding agencies.

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<sup>9</sup> 2 CFR § 200.313(b), 29 CFR § 97.32

<sup>10</sup> 29 CFR § 97.32(b) and (c)

- During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other programs or projects supported by the agency that financed the equipment. Second preference shall be given to projects or programs sponsored by other federal awarding agencies.
- When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment, subject to the written approval of the grant officer.<sup>11</sup>

#### For Grantees or Subgrantees/Non-Federal Entities

When equipment is acquired with federal grant funds received by a grantee or subgrantee/non-Federal entity on or after December 26, 2014, then these use standards must be followed:

- Equipment must be used by the grantee or subgrantee/non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the grantee or subgrantee/non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
  - Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
  - Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
- During the time that equipment is used on the project or program for which it was acquired, the grantee or subgrantee/non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
- Notwithstanding the encouragement in § 200.307 of the Uniform Guidance [Program income] to earn program income, the grantee or subgrantee/non-Federal entity must not use equipment acquired with the federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
- When acquiring replacement equipment, the grantee or subgrantee/non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.<sup>12</sup>

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<sup>11</sup> 29 CFR § 95.34(a)

<sup>12</sup> 2 CFR § 200.313(c)

## **Equipment Management Procedures**

### **For Recipients and Subrecipients Other than the State**

When equipment is acquired in whole or in part with Federal grant funds by governmental recipients/subrecipients other than the State prior to December 26, 2014, then these procedures for managing equipment (including replacement equipment) must be followed until disposition takes place:

- Property records must be maintained accurately and include: a description of the property; a serial number or other identification number; the source of the property; identification of who holds title; the acquisition date and cost of the property; the percentage of federal participation in the cost of the property; the location, use and condition of the property; and any ultimate disposition data including the date of disposal and sale price of the property.
- A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- Adequate maintenance procedures must be developed and implemented to keep the property in good condition.
- If the grantee or subgrantee/non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.<sup>13</sup>

When equipment is acquired in whole or in part with Workforce Investment Act (WIA) grant funds by non-governmental recipients prior to December 26, 2014, then these property management standards must be followed until disposition takes place:

- Equipment records shall be maintained accurately and include a description of the equipment, manufacturer's serial number, model number, federal stock number, national stock number, or other identification number, the source of the equipment (including the award number), whether title vests in the recipient or the federal government, the acquisition date, and cost, percentage of federal participation in the cost of the equipment, the location and condition of the equipment and the date the information was reported, unit acquisition cost, and ultimate disposition data including the date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the awarding agency for its share.
- Equipment owned by the Federal Government shall be identified to indicate Federal ownership.
- A physical inventory of the equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

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<sup>13</sup> 29 CFR § 97.32(d)

- A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.
- Adequate maintenance procedures shall be implemented to keep the equipment in good condition.
- Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.<sup>14</sup>

#### For Grantees or Subgrantees/Non-Federal Entities

When equipment is acquired in whole or in part with Federal grant funds by grantees or subgrantees/non-Federal entities on or after December 26, 2014, then, as a minimum, these procedures for managing equipment (including replacement equipment) must be followed until disposition takes place:

- Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- Adequate maintenance procedures must be developed to keep the property in good condition.
- If the grantee or subgrantee/non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.<sup>15</sup>

### **Disposition Requirements**

#### For Recipients and Subrecipients Other than the State

When the original or replacement equipment is acquired with Federal grant funds by governmental recipients or subrecipients other than the State prior to December 26, 2014, and if it is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, then these disposition requirements must be followed:

- Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

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<sup>14</sup> 29 CFR § 95.34(f)

<sup>15</sup> 2 CFR § 200.313(d)

- In cases where a grantee or subgrantee/non-Federal entity fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee/non-Federal entity to take excess and disposition actions.<sup>16</sup>

When the original or replacement equipment is acquired with Federal grant funds by non-governmental recipients prior to December 26, 2014, and if it is no longer needed, then these disposition requirements must be followed:

For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original awarding agency. The amount of compensation shall be computed by applying the percentage of federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the awarding agency.<sup>17</sup>

#### For Grantees or Subgrantees/Non-Federal Entities

When the original or replacement equipment is acquired with Federal grant funds by grantees or subgrantees/non-Federal entities on or after December 26, 2014, and if it is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the grantee or subgrantee/non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
- Except as provided in § 200.312 of the Uniform Guidance (Federally-owned and exempt property), § 200.313 (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the grantee or subgrantee/non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the grantee or subgrantee/non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- The grantee or subgrantee/non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the grantee or subgrantee/non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- In cases where a grantee or subgrantee/non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the grantee or subgrantee/non-Federal entity to take disposition actions.<sup>18</sup>

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<sup>16</sup> 29 CFR § 97.32(e)

<sup>17</sup> 29 CFR § 95.34(g)

<sup>18</sup> 2 CFR § 200.313(e)

## **Federally Owned Equipment**

In the event a grantee or subgrantee/non-Federal entity is provided federally-owned equipment:

For grant funds received prior to December 26, 2014:

- Title shall remain vested in the federal government.<sup>19</sup>
- Grantee or subgrantees/non-Federal entities shall manage the equipment in accordance with federal agency rules and procedures, and submit an annual inventory listing.
- When the equipment is no longer needed, the grantee or subgrantee/non-Federal entity shall request disposition instructions from the federal agency.<sup>20</sup>

For grant funds received on or after December 26, 2014:

Title to federally-owned property remains vested in the Federal Government. The grantee or subgrantee/non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the grantee or subgrantee/non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.<sup>21</sup>

## **Real Property**

Real property means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.<sup>22</sup>

Title to real property acquired under a grant or subgrant shall vest upon acquisition in the grantee or subgrantee/non-Federal entity respectively.<sup>23</sup>

Real property shall be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee/non-Federal entity shall not dispose of or encumber its title or other interests.<sup>24</sup>

According to TEGL 3-07, for all real property disposed of on or after February 15, 2007, the provisions at 29 CFR § 97.31(c) no longer apply. When real property is no longer needed for the purposes for which it was acquired, a state may either retain the property for other purposes or sell the property. A disposition while retaining the property for other purposes means that WIA, Unemployment Compensation, and Wagner-Peyser activities entirely vacate the property, but the state retains the property for other activities. Whether or not the property is retained for other purposes or sold, the disposition of property instructions in TEGL 3-07 must be followed. This provision applies to property acquired with WIA funds until further directives indicate otherwise.

WIOA provides that, notwithstanding any other provision of law, any Federal equity acquired in real property through grants to the States awarded under title III of the Social Security Act or under Wagner-Peyser is transferred to the States that used the grants for the acquisition of such

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<sup>19</sup> 29 CFR § 95.33, 29 CFR § 97.32(f)

<sup>20</sup> 29 CFR § 97.32(f)

<sup>21</sup> 2 CFR § 200.312

<sup>22</sup> 2 CFR § 200.85, 29 CFR § 97.3

<sup>23</sup> 2 CFR § 200.311(a), 29 CFR § 95.32, 29 CFR § 97.31(a)

<sup>24</sup> 2 CFR § 200.311(b),



property. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under this Act, Title III of the Social Security Act, or the Wagner-Peyser Act. Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under this Act, title III of the Social Security Act, or the Wagner-Peyser Act.<sup>25</sup>

### **Use of Certain Real Property for One-Stop Delivery System**

As noted below, Sec. 192(a) of the Workforce Innovation and Opportunity Act, effective transfers existing equity in real property acquired or amortized with Unemployment Compensation (UC) and Wagner-Peyser grant funds to the states for use in carrying out WIOA, UC, and Wagner-Peyser activities.

“Any Federal equity acquired in real property through grants to States awarded under Title III of the Social Security Act or under the Wagner-Peyser Act is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this Section shall be used to carry out activities authorized under this Act, the Wagner-Peyser Act, or Title III of the Social Security Act.”

### **Limitations**

WIOA does not permit grant funds to be used for buying real property, including purchases by means of amortization. This prohibition also included the acquisition of such property under capital leases. WIOA provides that a State shall not use funds awarded under this Act, title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after the date of enactment of the Revised Continuing Appropriations Resolution, 2007.<sup>26</sup>

States must not use funds awarded under WIOA, Title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any state on or after February 15, 2007, the date of enactment of the Revised Continuing Appropriations Resolution, 2007.<sup>27</sup>

WIOA does not authorize the use of properties with equity acquired using Reed Act funds for the WIOA One-Stop service delivery system. Properties having Reed Act equity may be used for the WIOA One-Stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Unemployment Compensation and Wagner-Peyser Act programs in such properties. When real property is no longer needed as described in the previous sentence, the state must request disposition instructions from the grant officer prior to disposition or sale.<sup>28</sup>

WIOA Title I funds must not be spent on construction or purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval from the

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<sup>25</sup> WIOA Section 192(a)

<sup>26</sup> WIOA Section 192(b)

<sup>27</sup> 20 CFR § 683.240(a)(3)

<sup>28</sup> 20 CFR § 683.240(b)

Secretary of Labor.<sup>29</sup> Under WIOA, Title I funds can be used for construction in only limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects under Sec. 170(d) of WIOA, YouthBuild programs under Sec. 171(c)(2)(A)(i) WIOA, and for other projects that the Secretary determines necessary to carry out WIOA, as described by under sec. 189(c) of WIOA.<sup>30</sup>

Expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life are capital expenditures.<sup>31</sup> Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with prior written approval of the federal awarding agency, or pass-through entity.<sup>32</sup>

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (refer to 2 CFR § 200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.<sup>33</sup>

### **Supplies**

Supplies means all tangible personal property other than equipment (as defined earlier in this policy).<sup>34</sup>

In terms of grant funds received on or after December 26, 2014, a computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the grantee or subgrantee/non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.<sup>35</sup>

### **State and Other Governmental Grantees and Subgrantees**

Title to supplies acquired under a Federal grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee/non-Federal entity respectively.<sup>36</sup>

If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any

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<sup>29</sup> 20 CFR § 683.235

<sup>30</sup> WIOA NPRM, Section-by-Section Discussion of Proposal

<sup>31</sup> 2 CFR § 200.13

<sup>32</sup> 2 CFR § 200.439(b)(3)

<sup>33</sup> 2 CFR § 200.452

<sup>34</sup> 2 CFR § 200.94, 29 CFR § 97.3

<sup>35</sup> 2 CFR § 200.94

<sup>36</sup> 2 CFR § 200.314, 29 CFR § 97.33

other federally sponsored programs or projects, the grantee or subgrantee/non-Federal entity shall compensate the awarding agency for its share.<sup>37</sup>

In terms of grant funds received on or after, December 26, 2014, the grantee or subgrantee/non-Federal entity must retain the residual inventory of unused supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment.<sup>38</sup> As long as the Federal Government retains an interest in the supplies, the grantee or subgrantee/non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.<sup>39</sup>

#### Non-Governmental Entities that Received Grant Funds on or before December 26, 2014

Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-federal sponsored activities or sell them, but shall, in either case, compensate the federal government for its share.<sup>40</sup>

The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by federal statute as long as the federal government retains an interest in the supplies.<sup>41</sup>

### **Intangible Personal Property**

#### Copyrights

In terms of grants received prior to December 26, 2014, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes:

- The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- Any rights of copyright to which a grantee or subgrantee/non-Federal entity, or a contractor purchases ownership with grant support.<sup>42</sup>

In terms of grants received on or after December 26, 2014, the grantee or subgrantee/non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a

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<sup>37</sup> 2 CFR § 200.314, 29 CFR § 97.33

<sup>38</sup> 2 CFR § 200.314(a)

<sup>39</sup> 2 CFR § 200.314(b)

<sup>40</sup> 29 CFR § 95.35(a) and (b)

<sup>41</sup> 29 CFR § 95.35(b)

<sup>42</sup> 29 CFR § 97.34

royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.<sup>43</sup>

**Disclaimer:**

This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

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<sup>43</sup> 2 CFR § 200.315(b)