

Community Economic Development • Job Opportunities for Low-Income Individuals


Office of Community Services

Administration for Children and Families
U.S. Department of Health and Human Services

Reversionary Interest
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Reversionary Interest

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Reversionary Interest Defined

- The Federal Government's ongoing interest in grant funds and property acquired or improved with grant funds


Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipients as trustees for the beneficiaries of the project or program under which the property was acquired or improved, and shall not be encumbered without the approval of the HHS awarding agency. (45 C.F.R. 74.37).

- Protects the Government's interest in grant funds, and property acquired with Federal funds
- Protects the grantee's Federal grant funds and property acquired with those funds from judicial process

▪ References:
 45 C.F.R. 74.21(b)(3)
 45 C.F.R. 74.37

HHS Grants Policy Statement (http://www.hhs.gov/grantsnet/docs/HHSGPS_107.doc)

Neukirchen v. Wood County Head Start, Inc., 53 F.3d 809 (7th Cir. 1995)
In re Joliet-Will County Community Action Agency, 847 F.2d 430 (7th Cir. 1988)
Palmiter v. Action, Inc., 733 F.2d 1244 (7th Cir. 1984)



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Triggering Events

- Triggered once the assets obtained or improved with grant funds are no longer needed for the originally authorized grant purpose
- Triggered when grantee fails to use grant funds or property acquired with or improved with grant funds as provided in grant application and award



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Key Terms

- **Property:** Includes real property, intangible property and debt instruments, and equipment.
- **Real Property:** Land, including land improvements, structures and appurtenances thereto (excludes moveable machinery or equipment).
- **Intangible Property and Debt Instruments:** Trademarks, copyrights, patents, and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other property ownership, whether tangible or intangible.
- **Equipment:** Tangible non-expendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- **Construction:** Includes the initial building or large scale modernization or permanent improvement of a facility.
- **Alteration and Renovation (A&R):** The work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the CSBG grant funded project. A&R may include work referred to as improvements, conversion, rehabilitation, remodeling or modernization, but is distinguished from construction and large scale permanent improvements. A&R may be classified as minor or major depending on the extent of the required work, its relationship to an existing structure, and its costs.
- **Hard Cost:** Includes expenditures for construction or acquisition of real property and major alterations and renovations of real property
- **Soft Cost:** Costs that do not result in the acquisition of an "enduring" asset. These expenditures could include: architectural design and services, permits, fees, insurance, legal costs incurred in negotiating contracts, etc.
- **Notice of Federal Interest (NFI):** A lien or other notice of public record indicating that property was acquired or improved with Federal grant funds and is subject to use and disposition conditions.



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Real Property

- **Notice of Federal Interest (NFI)**
To protect the Federal interest in real property that has been constructed or has undergone major renovation with HHS grant funds, recipients must record an NFI in the appropriate official records of the jurisdiction in which the property is located. Recordation must occur when construction or renovation begins.
- 45 C.F.R. 74.32(a)
Title to real property shall vest in the recipient subject to the condition that the recipient shall use the property for the authorized purpose of the project as long as needed and shall not encumber the property without approval of the HHS awarding agency.
- 45 C.F.R. 74.32(c)
When the real property is no longer needed for original project, the recipient shall request disposition instructions from the HHS awarding agency. In any sale of the property, the Federal Government must be compensated for that percentage of the current fair market value of the property attributable to the Federal share in the project.



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Equipment

- 45 C.F.R. 74.34
Title to equipment acquired with grant funds vests with the grant recipient subject to conditions. The recipient shall use the equipment in the project or program for which it was acquired as long as needed and shall not encumber the property without the approval of the HHS awarding agency.
- 45 C.F.R. 74.34(g)
When the recipient no longer needs equipment with a current fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original HHS awarding agency or its successor.
- 45 C.F.R. 74.34(h)
The HHS awarding agency reserves the right to order the transfer of title to the Federal Government or to a third party named by the awarding agency.



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Intangible Property

- 45 C.F.R. 74.36
Title to intangible property and debt instruments purchased or otherwise acquired under an award or sub-award vests upon acquisition in the recipient, but the property must be used for the originally authorized purpose and the recipient shall not encumber the property without the approval of the HHS awarding agency. When no longer needed for the purposes of the grant, the recipient shall request disposition instructions from HHS in accordance with 45 C.F. R. 74.34(g) and (h) (Equipment regulations)
- Reporting and Accountability
- Disposition of asset plan for loans
- Disposition of asset plan for stocks



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Disposition of Asset Plan for Loans

- Submitted by the grantee at the beginning of the grant, where grantee agrees to provide the Office of Grants Management (OGM) a copy of loan documents at the point in which a loan is executed.
- Loan documents include:
 - Identification of the loan recipient
 - Interest rate
 - Length and terms of loan
 - Payment schedule
 - Identification of any characteristics establishing defaults and recovery actions to be taken in event of default.



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Disposition of Asset Plan for Stocks

- Submitted by the grantee at the beginning of the grant period, where the grantee agrees to provide, within 90 days of the end of the project period, a report identifying stocks obtained with grant funds.
- The report should identify the following:
 - Stock cost per share
 - Current value
 - Number of shares held
 - Percentage of company ownership held
 - Projected date when stock will be liquidated

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Special Statutory Provisions for Intangible Property

- Public Law 106-113 (Consolidated Appropriations Act)

"The Secretary of HHS shall establish procedures regarding the disposition of intangible property, which permits grant funds, or intangible assets acquired with funds authorized under Section 680 of the Community Services Block Grant Act, as amended, to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant."

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Cautionary Tales

- Mexican American Unity Council, DAB No. 1341 (1992); United States of America v. Mexican American Unity Council, Inc., Civil Action No. SA-95-CA-0520 (W.D. TX 1996)**
 - Grantee required to remit to the Government the Government's share of proceeds from sale of property purchased with grant funds, funds received but not spent on grant purposes and interest on those funds (which were used to purchase certificates of deposit)
 - Here the plain terms of the grant required approval in writing for the disposition of the property, and MAUC did not allege that it had such approval. Moreover, mere approval of the sale would not relieve MAUC of the obligation to account for the federal share of the proceeds. DAB No. 1341 at 7.
 - The Government pursued enforcement of the DAB's decision in Federal District Court - By the time the Court ruled, in June of 1996, the amount owed the Government grew from \$1,590,600 to \$2,613,554.63 due to accumulated interest.
- People's Involvement Corporation, Inc. DAB No. 1967 (2005)**
 - Grantee sold two properties purchased with grant funds without first seeking disposition instructions from OCS and without notifying OCS of the sales. Grantee must account for funds obtained in sale.
- Florence Villa Community Development Corporation DAB No. 2198 (2008)**
 - Grantee used grant funds to make a loan; failed to account for recovered loan proceeds; failed to seek disposition instructions from OCS/OGM and transferred those funds to an unrelated project without prior written approval
 - Application of disposition rules for intangible property (45 CFR 74.36(e))

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Delta Foundation, Inc.

- Delta Foundation, Inc., DAB No. 1710 (1999), aff'd 303 F.3d 551 (5th Cir. 2002)
Disallowance covering four separate grants – six cited grounds:
 - lack of documentation
 - failure to safeguard assets (equipment: loan default)
 - expenditures incurred outside the grant period
 - unallowable costs (unauthorized loans; garnishment actions, etc.)
 - subsidizing subsidiary organizations (failure to purchase stock)
 - unspent funds

"Delta did not, for the most part, implement the projects described in its grant applications, which set forth specific business plans and included obtaining additional private funding. Instead, it is evident that Delta viewed the grant funds it received from OCS as assets it could use for the benefit of any of its subsidiary organizations. Delta also did not abide by the terms of the grant awards, which incorporated specific requirements for documenting costs charged to the grants, nor did it abide by other basic requirements pertaining to the allowability of costs charged to the grants." DAB No. 1710, at 1.

"When viewing this behavior [in not disclosing the dissolution of its subsidiaries] against the backdrop of Delta's efforts to mislead auditors and its other skulduggery, Delta has not persuaded this Court that the Board's disallowance was arbitrary and capricious." 303 F.3d at 565.



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DAB Decisions

- Northeast Louisiana Delta Community Development Corporation, DAB No. 2165 (2008) (Disallowance upheld because grantee "failed to disclose in its application any intention to make subawards" to for-profit subsidiaries, and failed to "make any showing that it would retain appropriate controls" over those subsidiaries.)
- River East Economic Revitalization Corporation, DAB No. 2087 (2007) (Ignorance is not bliss)– "[W]e find River East's claims of ignorance of grant requirements both disturbing and less than credible. . . . As part of the grant application and award process, River East was informed of, and agreed to abide by, the governing regulations and conditions applicable to the award.")
- DAB Decisions available online at <http://www.hhs.gov/dab/>
- Moral of the story:
 - When in doubt consult with Grants Management Office
 - All requests/all approvals must be in writing



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Summary

- Reversionary interest protects the Federal Government's interest in property (real, tangible, and intangible) purchased or improved with grant funds
- Grantees are required to record a NFI whenever real property is purchased in whole or in part with grant funds or whenever major alteration or renovation of property with grant funds takes place
- Grantees are accountable for keeping track of the use of any tangible (equipment) or intangible property purchased or otherwise acquired with HHS grant funds and must ensure that such property is used only for the originally-authorized purpose of the grant award
- References:
 - 45 CFR Part 74 (esp. 74.21, 74.32 – 74.37, and 74.62)
 - OMB Circular A-122; 2 CFR Part 230
 - <http://www.hhs.gov/grantsnet/LawsRegs.htm>
 - Grants Policy Statement (GPS) – http://www.hhs.gov/grantsnet/docs/HHSGPS_107.doc
 - <http://www.hhs.gov/dab/>



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