

LEGAL TITLE TO ART WORK PRODUCED UNDER THE 1930S AND 1940S NEW DEAL ADMINISTRATION

I. Executive Summary

During the New Deal era, the United States government administered four public art programs: the Public Works of Art Project (PWAP), the Works Progress Administration's Federal Art Project, the Treasury Relief Art Project (TRAP), and the Section of Fine Arts.¹ The art programs operated between 1933 and 1942 with rules and regulations presiding over how the artists were selected and paid, how the art was documented and ultimately, where it was installed or to whom it was distributed. However, a number of circumstances—the number of years that have passed, the restructuring or abolishment of the agencies that house the works of art, and/or poor record keeping—have contributed to the separation of the documentation from the artwork(s). In many cases, this leaves the stewarding party with little information about legal title and responsible to the works of art.

This document serves to provide general concepts of federal property ownership, a brief overview of the art programs, and to address the various conditions that determine legal title and the impact this has on the parties that possess New Deal works of art.²

II. General Concepts of Federal Property Ownership

Federal property, and the right to control and dispose of federal property, is governed by different laws than those which govern private property. The Constitution provides that "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."³ The term "property" as used in the Property Clause of the Constitution has been defined to include "all other personal and real property rightfully belonging to the United States."⁴ Congress has the right to determine to whom property

¹ The phrase "new deal" was first used by Franklin D. Roosevelt in 1932, when he accepted the Democratic nomination for president and promised a "new deal for the American people." Since then, "New Deal" has been used as a label for Roosevelt's administration and its numerous programs for domestic economic reform during the 1930s and 1940s.

² As used herein, the term "New Deal artwork" refers to works of art produced under one of the four New Deal art programs: the Public Works of Art Project, the Section of Fine Arts, the Works Progress Administration's Federal Art Project or the Treasury Relief Art Project.

³ U.S. Constitution, Article IV, Section 3, clause 2.

⁴ *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 331, 80 L. Ed. 688, 56 S.Ct. 466 (1936).

will be sold and under what conditions,⁵ since the "power of Congress to dispose of any kind of property belonging to the United States 'is vested in Congress without limitation."⁶

Essentially, the Constitution grants Congress the right to determine who within the Federal Government has authority to dispose of Federal property, and by what means such disposals can take place. Authority to dispose of United States' property can only be granted by an Act of Congress.⁷ Furthermore, only Congress has the power to determine the conditions upon which property of the United States is sold or otherwise disposed.⁸ An individual or entity may not dispose of federally owned property unless Congress has conferred, expressly or implicitly, such power.⁹ Therefore, no Federal agency, or an individual within that agency, has authority to dispose of Federal property unless Congress has granted that authority.

For example, the General Services Administration (GSA) has been granted authority to dispose of both personal and real property that has been determined excess to one Federal agency (no longer needed by that agency for mission purposes), or surplus to the Federal Government (no longer needed by any agency for mission purposes).¹⁰ Congress has established a specific process for the disposal of property from the Federal government which GSA must follow.¹¹ GSA has developed regulations which implement its disposal authority.¹² Only those individuals within GSA who have been delegated authority by the Administrator may dispose of Federal excess and surplus property, and only in the manner dictated by Federal statutes and regulations. This same restriction on the ability to dispose of United States property applies to all Federal agencies.

For this reason, the courts have held that the Federal Government cannot abandon property.¹³ Furthermore, "[i]t is well settled that title to property of the United States cannot be divested by negligence, delay, laches, mistake, or unauthorized actions by subordinate officials."¹⁴ Additionally, inactivity, neglect

⁵ Van Brocklin v. State of Tennessee, 117 U.S. 151, 167, 6 S.Ct. 670, 29 L.Ed. 845 (1886).

⁶ Alabama v. Texas, 347 U.S. 272, 273, 98 L.Ed. 689, 74 S.Ct. 481 (1954) (*per curiam*).

⁷ Beaver v. United States, 350 F. 2d 4, 8 (9th Cir. 1965).

⁸ Butte City Water Co. v. Baker, 196 U.S. 119, 126, 49 L. Ed. 409, 25 S.Ct. 211 (1905).

⁹ *Id.*, see also Royal Indemnity Co. v. United States, 313 U.S. 289, 85 L. Ed. 1361, 61 S.Ct. 995 (1941) (subordinate officers of the IRS lacked statutory authority to release tax bond); Utah Power & Light Co., 243 U.S. at 404 (state law of eminent domain is not applicable to federal land except as adopted or made applicable by Congress).

¹⁰ 40 U.S.C. §§ 102, 521, 525

¹¹ 40 U.S.C. §§ 541-559.

¹² 41 C.F.R. §§ 102-37, 102-38, 102-75.

¹³ United States v. Steinmetz, 763 F. Supp. 1293 (D.N.J. 1991), *aff'd*, 973 F.2d 212 (3rd Cir. 1992).

¹⁴ *Id.*, see also Royal Indemnity Co., *supra*.

or unauthorized intentional conduct on the part of government officials will not divest the United States of ownership interest in property.¹⁵

III. New Deal Artwork Concise Administrative Summary

The thousands of murals, easel paintings, prints, and sculptures created under the New Deal art programs are commonly referred to as WPA artworks. This classification proves misleading, as only one of the four programs, the Federal Art Project, operated directly under the Works Progress Administration (WPA).¹⁶ A more accurate classification of the works of art created under the federal art programs of the 1930s and early 1940s is New Deal artwork, as they were created during the era of President Franklin D. Roosevelt's New Deal economic recovery programs.

The Department of the Treasury created the first federal art program in 1933, when it initiated the Public Works of Art Project. Two subsequent programs—the Treasury Relief Art Project and the Section of Fine Arts—also originated under the Department of the Treasury. In 1935 the Works Progress Administration—an independently operating federal agency—established the Federal Art Project.

A number of changes occurred in 1939, when the Reorganization Act created the Federal Works Agency.¹⁷ Incorporated into this new agency were the art programs of both the Department of the Treasury and the Works Progress Administration. In addition to these changes, the Act changed the name of the Works Progress Administration to the Works Projects Administration. By 1942 the all of the New Deal art programs ceased to operate.¹⁸

The General Services Administration's responsibility for administering New Deal works of art came from the Federal Property and Administrative Services Act of 1949. The Act established the General Services Administration (GSA) and in the process transferred "all records, property, personnel, obligations, and commitments of the Federal Works Agency, including those of all agencies of the Federal Works Agency."¹⁹ Included in the mandate was the stewardship of the portable artworks created under the federal government's New Deal art projects.

¹⁵ *Kern Copters, Inc. v. Allied Helicopter Serv., Inc.*, 277 F. 2d 308 (9th Cir. 1960); *United States v. City of Columbus*, 180 F. Supp. 775 (S.D. Ohio 1959).

¹⁶ The Works Progress Administration was established by Executive Order No. 7034 on May 6, 1935.

¹⁷ The Reorganization Act of 1939 was effective July 1, 1939.

¹⁸ *Federal Works Agency, Final Report on The WPA Program 1935-1943*, (Washington, DC: Government Printing Office, 1947). 14-15.

¹⁹ *Federal Property and Administrative Services Act of 1949*, (Sec.103(a)).

IV. Title to New Deal works of art

The New Deal art programs created works of art for public use, but differed in the way they operated. Some programs were set up to provide economic relief and paid artists an hourly wage, while other programs administered competitions to commission murals and sculptures for specific sites within public buildings. This section provides general background information and then outlines the legal authorities and governing regulations for each program.

Public Works of Art Project (PWAP)

Dates of Operation: 1933-1934

The Public Works of Art Project (PWAP) was the first federal relief program for artists. The following excerpt is from the final report for the project:

The Public Works of Art Project was set up under the Treasury Department for supervision, as one of the agencies to extend relief to the professional class, its object being to employ artists who were unemployed in the decoration of public buildings and parks. ...

While the primary purpose of the project was to give employment to needy artists, a dual test was set up in the selection of those employed: first, that they were actually in need of employment and, second, that they were qualified as artists to produce work which would be an embellishment to public property.²⁰

The bulletin, titled "Legal Title to Works Produced under the Public Works of Art Project," definitively outlines the conditions for ownership of the artwork. It determined that portable works of art are considered the property of the federal government and artworks that are site-specific should be considered an inherent part of the building. The relevant portions of the Bulletin are as follows:

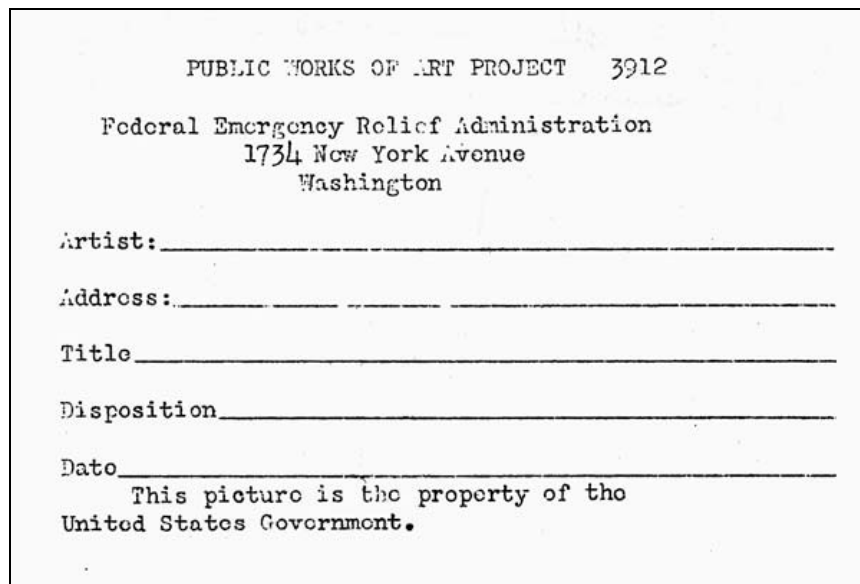
Paragraph 1: All works of art executed with the intent that they should occupy a particular place in some public building are to be treated as a part of that building.

Paragraph 3: All works of art produced by the project which are movable and not executed to occupy some particular location are the property of the Federal Government and will be in the custody for the

²⁰ *Report of the Assistant Secretary of the Treasury to Federal Emergency Relief Administrator, PWAP*, (Washington, DC: U.S. Government Printing Office, 1934).

Federal Government of the various Regional and Sub-Regional Committees and the central office in Washington.²¹

Almost 14,000 artists were on the PWAP payroll and received weekly salaries. When the program ended in 1934, over 15,000 works of art had been created, with many of them being lent to government officials or public institutions such as orphanages, libraries, schools, and museums.²² When the works of art were loaned paperwork documenting that ownership remained with the federal government accompanied the artwork. Paper labels (see Figure 1) were placed on the reverse of the artwork. The arrangement of the information varied slightly from label to label, but, in general, the information contained on each label was the same. In addition, metal tags (see Figure 2) were adhered to the front of each frame.



PUBLIC WORKS OF ART PROJECT 3912

Federal Emergency Relief Administration
1734 New York Avenue
Washington

Artist: _____

Address: _____

Title _____

Disposition _____

Date _____

This picture is the property of the
United States Government.

Figure 1: Example of a paper label from the Public Works of Art Project



Figure 2: Metal identification tag from the Public Works of Art Project

²¹ The Bulletin only applies to works produced under the Department of Treasury's Public Works of Art Project (PWAP), which later became a part of the Federal Works Agency. A copy of the Bulletin is attached.

²² *Report of the Assistant Secretary of the Treasury to Federal Emergency Relief Administrator, PWAP*, (Washington, DC: Government Printing Office, 1934).

Section of Painting and Sculpture—(in 1939, renamed the Section of Fine Arts)
Dates of Operation: 1934 – 1942

Originally called the Section of Painting and Sculpture, the Section of Fine Arts (or, the Section, as it was commonly referred to under both names) was administered by the Treasury Department. The Section of Fine Arts' primary objective was to "secure suitable art of the best quality available for the embellishment of public buildings."²³ Artworks created under the Section of Fine Arts were comprised of site-specific murals and sculptures for newly constructed federal buildings and post offices. Unlike the other New Deal art programs, the Section awarded commissions through competitions and paid artists a lump sum for their work. Such competitions were set up so that the artists submitted proposals without their names identifying their submission. In addition the competitions were open to all artists, regardless of economic status, and typically required entries to follow a certain theme relating to the building's function and geographic location. In total, the Section commissioned over 1300 murals and 300 sculptures.²⁴

The winning artist signed a contract issued by the Treasury Department, Office of Commissioner of Accounts and Deposits, Section of Surety Bonds. Portions of the contract that determine ownership are as follows:

Article 1 –Scope of Contract. (a) – The Artist, for the consideration hereinafter mentioned, shall furnish the materials and render the services required in the preparation and furnishing of a preliminary design, a full size cartoon, and a mural; and shall perform all work required for installation of the mural... and shall furnish an 8" x 10" negative and photograph of both the completed full size cartoon and the completed mural. All the foregoing, and all rights of the Artist therein, shall become the property of the United States and shall be delivered to the Government prior to final payment... .

A sample contract (Form 8651) is attached.

Works Progress Administration's Federal Art Project
(In 1939, renamed the Works Projects Administration Art Program)
Operated from 1935-1942

²³ U.S. Treasury Department Press Release, October 1938.

²⁴ Final Report, Section of Fine Arts, Public Buildings Administration, October 16, 1934 to July 15, 1943.

The Federal Art Project (FAP) was the largest of the New Deal art programs in both its scope and the number of artists employed. Its most productive period lasted until 1939, during a massive reorganization of all New Deal relief programs in which FAP was renamed and reduced in size. Upon its discontinuation in 1942, the WPA's Federal Art Project and Art Program had produced over 108,000 easel paintings, 11,300 fine prints, 2,500 murals, and 18,000 sculpture works.²⁵ Completed works of art were either loaned or allocated to federal, state and local governmental entities and tax supported organizations, or non-profit organizations. For each loan or allocation, paperwork, labels and metal tags (see figures 3-6) accompanied the artworks.

A 508
DPS Form 12
FEDERAL WORKS AGENCY
WORK PROJECTS ADMINISTRATION
WPA ART PROGRAM
IDENTIFICATION CARD

ARTIST Yampolsky, O.

STATE ILL. MEDIUM W.C. #5189

TITLE OF WORK Late Summer Days

ALLOCATED LOANED TO Chicago Relief Office of
Commissioner, Leo M. Lyons, 209 W. Jackson Blvd.
Chicago, Illinois Date July 9, 1941

The above-named agency assumes custody of this work
subject to regulations of the WPA Art Program and agrees
not to remove this identification.

Figure 3: Paper label from the WPA Art Program, DPS Form 12



Figure 4: Metal identification tag from the WPA Federal Art Project

²⁵ *Final Report on The WPA Program, 1935-1943*, (Washington, D.C.: U.S. Government Printing Office, 1947).

FAP #3 FEDERAL ART PROJECT 9950-C-M
of the Works Progress Administration
Washington, D.C.
ARTIST Charles H. Reinike
STATE Louisiana MEDIUM Watercolor
TITLE OF WORK SAW MILL - TUNICA
LOANED TO Mr. Charles Thompson, Division of Cultural
Relations, Department of State, Room #395
DATE 3/23/40
This work is the property of the United States
Government and is loaned subject to regulations
of loan and is not to be removed.

Figure 5: Paper label from the Federal Art Project

WORKS PROGRESS ADMINISTRATION
FEDERAL ART PROJECT
STATE N.Y. CITY N.Y.
ARTIST PYTLAK, LEONARD
TITLE STOCK YARD
MEDIUM LITHO
PROJECT NO. 565-3-1
DATE 8/8/38
Property of the
United States Government
FAP: 394

Figure 6: Paper label from the Federal Art Project

During the operation of the WPA art program, it was clearly stated that the federal government would hold full legal title to artwork on long-term loan. Title to such artwork remains in the government today. To establish the status of ownership with regard to works allocated, GSA relies on the federal property laws discussed in the above, and on the regulations of the WPA as established in The Operation of Specific Professional and Service Projects, Operating Procedure No. G-5, section

32, January 10, 1940 (“Operating Procedure”), and the Public Works of Art Project Bulletin issued by the Assistant Secretary of the Treasury on March 26, 1934, titled “Legal Title to Works Produced under the Public Works of Art Project” (“Bulletin”).

The relevant portions of the Operating Procedure with regard to allocations are as follows:

1. Section 32, Part A, 1st paragraph: “For the purposes of this section the word ‘allocated’ shall mean the transfer of title.”
2. Section 32, Part C, 3rd paragraph: “If an agency or institution which has received a work of art on allocation or loan desires to be released from the responsibility of custody of the work, the official representative of the agency or institution shall communicate with the Director of the WPA Art Program, Washington, D.C.”
3. Request for Allocation Form, end of page: “It is understood that custody of the work listed above will not be transferred and that the work will be exhibited for public use as indicated. Institutions desiring to be released of any work shall communicate with the Director of the Work Projects Administration - Art Program, Federal Works Agency, Washington, D.C.”
4. Receipt for Allocation of Works of Art: “It is understood and agreed that the allocation of these works is subject to the regulations of the WPA Art Program and is for the purpose which we have indicated on REQUEST FOR ALLOCATION, executed by us.”

In the first section of the Operating Procedure quoted above, it states that allocated means the transfer of title. On the portion of the Request for Allocation form, quoted in paragraph 3 above, it states that custody of the work would not be transferred. Statements such as these, read separately and out of context from the Operating Procedure, might cause confusion. However, if these statements are read in the context of the entire Operating Procedure, a pattern emerges evidencing the intent of the original program.

The first section quoted indicates that some form of title was meant to be transferred in an allocation. However, Part C of the Operating Procedure, quoted above in paragraph 2, shows that the WPA intended to maintain some level of control over the works of art by providing a means of recovery if the custodian agency or institution no longer desired to be responsible for the work of art. This intent is reflected again in the Receipt for Allocated Works of Art form, quoted in paragraph 4 above.

Another example of the WPA's intent to keep some level of control over the works of art in the government can be seen in Part A, second paragraph of the Operating Procedure.²⁶ There it states that nonprofit institutions could receive works under the loan program, but only tax supported entities could receive the works by allocation.

It appears to be the intent of the Operating Procedure, and it is the position of GSA, that allocated works of art were transfers of restricted title. The receiving agency or institution received legal title to the works of art limited by the purpose stated in the allocation forms and by the regulations. For example, if a WPA work of art was allocated to be displayed in a public building by a state agency, and the state agency could no longer display the work, the legal rights to the work retained by the federal government could result in the reversion of the artwork to the federal government. The state agency cannot sell or otherwise dispose of the artwork. However, if the state agency would like to store the work, then display it again in the future, it can do so without triggering the reversionary rights of the federal government.

Treasury Relief Art Project (TRAP)
Dates of Operation: 1935 - 1938

Though it was under the supervision of the Treasury Department, the Treasury Relief Art Project (TRAP) received funding through the WPA. The fund enabled TRAP to provide paintings and sculptures for various federal buildings, both new and old, including post offices, courthouses, and U.S. embassies. Following the employment guidelines to those of the WPA, TRAP typically selected artists from relief rolls and paid them a weekly or monthly wage. However, unlike the WPA, TRAP only loaned to federal government agencies.²⁷ Similar to the PWAP and FAP, the works of art were identified with labels and tags (see Figure 7). During its three-year tenure, TRAP employed over 400 artists to create paintings, murals, and sculptures.²⁸



Figure 7: Metal Identification Tag from the Treasury Relief Art Project (TRAP)

²⁶ This section is not quoted above, but a copy of the Operating Procedure is attached.

²⁷ Olin Dows, *Interim Report, Treasury Relief Art Project*, May 1, 1936.

²⁸ Cecil H. Jones, Acting Chief, TRAP, Memorandum to Edward Bruce, May 26, 1937.

V. Applying GSA's Position to New Deal Artwork

Based on the legal precedent cited above, GSA takes the position that, unless a transfer of title occurred consistent with the authority granted to the New Deal agencies to dispose of the works of art produced by employees of those agencies, the United States maintains ownership of these works of art. While GSA recognizes that there have been many stories of works of art abandoned or even thrown in the trash, GSA does not believe the employees of the New Deal agencies were authorized to treat the property of the United States in this manner. Therefore, in determining whether the United States maintains an ownership interest in an individual work of art, GSA reviews the terms by which that work was conveyed, the general practice of the New Deal agency with control over the work in question, and any other information available regarding the authority to convey title of the work.

GSA applies this position to movable works of art. However, if the artwork is an integral part of the structure (site-specific murals, bas-reliefs and architectural ornamentation) GSA, on behalf of the United States, no longer maintains an ownership interest in the artwork, unless that ownership interest was preserved in the documents transferring custody of the artwork(s).²⁹ GSA does request that any institution that has acquired a structure that contains New Deal artwork that is an integral part of the structure, and is preparing to destroy that artwork, contact the GSA Fine Arts Program.

VI. Other Circumstances or Situations

New Deal Artworks Housed by Other Federal Agencies

GSA does not inventory portable New Deal works of art that are housed in all federal agencies. For example, this includes federal agencies such as, the Library of Congress, the National Archives and Records Administration, U.S. Military Agencies, the Departments of State, the Treasury, or the Interior. These works of art are considered federal property and administered by the individual agencies' federal curatorial staff. When a federal agency does not have a curatorial function or staffing, the GSA may act as the steward and administer the artworks.

²⁹ Other laws may apply to New Deal works of art even though the federal government no longer retains an ownership interest. For example, the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. §470, *et seq.*, may apply to the structure if the structure is 50 years old or older. NHPA protects the original fabric of the building. Individual states also have laws that protect historical property.

New Deal artwork installed in U.S. Post Offices

There are numerous New Deal works of art located in post office buildings across the country. In most cases, the works of art are the property of the US Postal Service. Effective June 30, 1971, the Postal Reorganization Act, Public Law 91-375, transferred individually identified properties from the federal government to the U. S. Postal Service.³⁰ Included in the transfer were the New Deal works of art that were considered site-specific.

IV. Impact on Nonfederal Agencies and Other Parties Housing New Deal Artworks

This position has no immediate impact on the nonfederal repositories (nonprofits, state or local governmental agencies) housing New Deal artwork. GSA continues to catalog portable works of art created under the New Deal that are located in non-federal repositories, but has no intention of physically reclaiming any of these works unless requested to do so by the custodial agency or institution.

Private parties in possession of New Deal artworks should consult legal counsel to determine if the artwork has legally transferred to that private party.

If you have questions regarding this issue, please contact:

Richard R. Butterworth, Jr.
Senior Assistant General Counsel
Real Property Division
U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405
richard.butterworth@gsa.gov
www.gsa.gov/finearts

³⁰ A listing of transferred properties is included in Appendix B of the Federal Register, Vol.36, No. 173—Saturday, September 4, 1971.

B U L L E T I N

PUBLIC WORKS OF ART PROJECT

Legal Title to Works Produced under the
Public Works of Art Project

The following memorandum covering the question of the legal title to works of art produced under the Public Works of Art Project and the distribution of these works of art is issued for the guidance of the Central Office, Regional and Sub-Regional Committees conducting the Project.

1. All works of art executed with the intent that they should occupy a particular place in some public building are to be treated as part of that building.
2. The same rule applies as to any piece of sculpture executed for the purpose of being definitely placed in any building or in a public park.
3. All works of art produced by the project which are movable and not executed to occupy some particular location are the property of the Federal Government and will be in the custody for the Federal Government of the various Regional and Sub-Regional Committees and the central office in Washington. The central office and the various Regional Committees in consultation with the central office shall have the authority to place the objects of art produced in any building or park which is in whole or in part supported by taxes; Sub-Regional Committees should forward all works of art in this category to the Regional Committee unless placed in a public building. A suitable label shall be attached in some convenient form to each work of art indicating its title, the artist producing it, and the fact that it was produced under the Public Works of Art Project.
4. In cases such as etchings, lithographs, et cetera, where more than one copy or print of the work of art is produced, the plate, stone, woodblock, etc., shall be kept in the custody of the Regional Committees, until the edition of prints is decided upon by the Regional Committee in consultation with the central committee, then the original plate, etc., shall be forwarded to the Washington Office. In cases coming under this paragraph, the artist shall be allowed to retain for his own files one print.
5. In distributing works of art coming under paragraph three the Regional Committees and the Washington Office shall have discretion in determining the most suitable place of exhibition.
6. Regional Committees and Sub-Regional Committees shall keep a complete record of all works of art produced by artists employed by them. This record should show the name of the artist who produced the work and title which will distinguish it and its destination. A duplicate copy of the report being kept by the Sub-Regional Committees shall be sent to the Regional Committee and consolidated with their own report which shall be sent to the central office in Washington and consolidated with a similar report which the Washington office shall keep as to all works of art sent to them. All of these reports should include not only the works of art produced under paragraphs one and two, but the works of art to which paragraph three of this memorandum applies. A copy of the combined inventory of all of the work

done under the project shall be sent to the Federal Civil Works Administration.

7. In cases such as work being done by the artists in the C.C.C. camps and public works projects arrangements will be made at the request of the artists for the artists to send their work direct to the Washington office and not through the Regional or Sub-Regional Committees.

March 26, 1934.

L. W. ROBERT, Jr.
Assistant Secretary of the Treasury

SAMPLE CONTRACT FROM THE FEDERAL WORKS AGENCY

CERTIFIED COPY

CONTRACT
of
Gertrude Goodrich

Of **New York, New York**

For **Painting a Mural**

For U.S. **POST OFFICE**

At **BUCHANAN, MICHIGAN**

Dated **July 15, 1941**

Amount, \$ **750.00**

(Following for use only by the Public
Buildings Administration, Federal
Works Agency)

Copy assignment: CG O

FM/F FINE ARTS ARTIST PER

Final Settlement Authorized....., 19

Last Guaranty Expires....., 19

Form 8651-a
PUBLIC BUILDINGS ADMINISTRATION
FEDERAL WORKS AGENCY

PUBLIC BUILDINGS ADMINISTRATION
FEDERAL WORKS AGENCY

Original contract and bonds
examined and approved, by direction
of the Federal Works Administrator.

August 28, 19**41**

F. M. Cook

Chief Counsel.

AR

PUBLIC BUILDINGS ADMINISTRATION
FEDERAL WORKS AGENCY

September 9, 19**41**

I hereby certify that the
within papers are true and correct
copies of the originals on file in
the General Accounting Office.

Neal A. Melnick

Supervising Engineer.

eh

SAMPLE CONTRACT FROM THE FEDERAL WORKS AGENCY

WALpb 3006

C O N T R A C T

BETWEEN

THE UNITED STATES OF AMERICA

AND

GERTRUDE GOODRICH, ARTIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69

THIS AGREEMENT, entered into this 10th day of July, 1941, between the United States of America, acting by and through the Federal Works Administrator, represented by the Commissioner of Public Buildings, Public Buildings Administration, Federal Works Agency (hereinafter called the "Commissioner"), and Gertrude Goodrich of New York, New York (hereinafter called the "Artist"), witnesseth that the parties hereto do mutually agree as follows:

Article 1. - Scope of contract. (a) - The Artist, for the consideration hereinafter mentioned, shall furnish the materials and render the services required in the preparation and furnishing of a preliminary design, a full size cartoon, and a mural; and shall perform all work required for installation of the mural in the space over the Postmaster's door in the public lobby of the Postman, Michigan, Post Office Building; and shall furnish an 8" by 10" negative and photograph of both the completed full size cartoon and the completed mural. All of the foregoing, and all rights of the Artist therein, shall become the property of the United States and shall be delivered to the Government prior to final payment hereunder, but the Artist may copy same with the written permission of the Commissioner or his duly authorized representative.

(b) - The mural is to be 11'10" wide by 6'2" high, with a total approximate area of 48 square feet.

(c) - The subject-matter of the mural is to be "Production". The medium is to be tempera on canvas.

(d) - The preliminary design shall be in full color and in the scale of 2" to the foot. The Artist shall, without additional expense to the Government, revise the said preliminary design until it meets the requirements of the Commissioner.

(e) - The Artist shall not proceed with the installation of the mural until the Commissioner or his duly authorized representative has approved the Artist's detailed description of the method of installing the mural in place.

(f) - All work under this contract shall be completed within 90 calendar days after the date hereof unless such time shall be extended by the Commissioner.

Article 2. Fee and Payments. - The Artist shall be paid Seven Hundred Fifty Dollars (\$750.00) in full payment for all services rendered under this contract; payment to be made in the following order:

One Hundred Fifty Dollars (\$150.00) when the preliminary design is furnished and approved by the Commissioner.

Two Hundred Fifty Dollars (\$250.00) when the full size cartoon is furnished and approved by the Commissioner and a photograph and negative thereof are furnished.

Three Hundred Fifty Dollars (\$350.00) when the mural is completed, installed, and approved by the Commissioner, and a photograph and negative thereof are furnished and when all other services of the Artist hereunder are finally completed. This payment shall constitute final acceptance of all services required under this contract to the extent that final acceptance of the whole or any part of the work has not otherwise been made in writing by the Commissioner.

SAMPLE CONTRACT FROM THE FEDERAL WORKS AGENCY

- 4 -

1 Article 3. Care of the Work. - The Artist, without additional expense to the
2 Government, shall be responsible for all damage to persons or property that may
3 occur as the result of the Artist's fault or negligence in connection with the prose-
4 cution of the work, and shall be solely responsible for the care and protection of
5 work performed until completion and final acceptance thereof by the Commissioner,
6 and shall restore any work damaged prior to said final acceptance. Insurance on the
7 work shall be carried by the Artist, without additional expense to the Government,
8 and such evidence of same shall be furnished as may be required by the Commissioner.
9

10 Article 4. Inspection. - The Artist shall furnish at all times convenient fa-
11 cilities for inspection of the work by authorized representatives of the Commissioner.
12

13 Article 5. Abandonment or indefinite deferment of work. - If the Commissioner
14 shall deem it expedient, or it shall become necessary on behalf of the United States,
15 to abandon or indefinitely defer the work under this contract before completion of
16 the services to be rendered thereunder, the Artist shall be entitled to such just
17 compensation, in lieu of the fee hereinbefore stipulated, as may be agreed upon in
18 writing at the time; provided, that in case of the inability of the parties hereto
19 to reach such an agreement, the Commissioner shall fix the value of the services
20 so to be specifically compensated, and his decision shall be binding upon the parties
21 hereto, subject to written appeal by the Artist within thirty days to the Federal
22 Works Administrator, whose decision as to the amount of such compensation shall be
23 final and conclusive on the parties hereto; and provided, further, that the payment
24 by the United States of such compensation shall be in full and final settlement for
25 all work theretofore performed by the Artist, and all said work shall upon said pay-
26 ment become the property of the United States to the same extent as provided in
27 Article 1 (a) above.
28

29 Article 6. Termination. - If the Artist violates any of the terms or conditions
30 of this contract, or if, in the opinion of the Commissioner, the conduct of the Artist
31 is such that the interests of the United States are thereby likely to be placed in
32 jeopardy, the Commissioner may by written notice to the Artist terminate this con-
33 tract, in which event all work theretofore performed by the Artist shall become the
34 property of the United States to the same extent as provided in Article 1 (a) above;
35 provided, however, that the Artist shall receive equitable compensation for such
36 services as shall, in the opinion of the Commissioner, have been satisfactorily per-
37 formed up to said date of termination; such compensation to be fixed by the Com-
38 missioner, whose decision shall be binding upon the parties hereto, subject to written
39 appeal by the Artist within thirty days to the Federal Works Administrator, whose
40 decision as to the amount of such compensation shall be final and conclusive upon
41 the parties hereto.
42

43 Article 7. Officials not to benefit. - It is an express condition of this con-
44 tract that no Member of or Delegate to Congress, or Resident Commissioner, shall be
45 admitted to any share or part of the contract, or to any benefit to arise therefrom.
46

47 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the
48 day and year first above written.
49

50 WITNESSES:
51

52 _____
53 _____
54 _____
55 _____ (Address)
56 _____

57 THE UNITED STATES OF AMERICA

58 By W. E. Reynolds
59 Commissioner of Public Buildings

60 MKE AR By Direction of the Federal Works
61 TJC FWB R SG Administrator.
62

63 This contract is authorized by the acts of ~~March 21, 1930 and June 21, 1930,~~
64 ~~as amended.~~
65
66

WORKS PROGRESS ADMINISTRATION

WORK PROJECTS ADMINISTRATION

PROCEDURAL PUBLICATIONS

OPERATING PROCEDURES, HANDBOOKS
OF PROCEDURES, MANUAL OF RULES
AND REGULATIONS, ETC.

OPERATING PROCEDURE G-4 - 5

FEDERAL WORKS AGENCY

WORK PROJECTS ADMINISTRATION

Washington, D.C.

THE OPERATION OF SPECIFIC PROFESSIONAL AND SERVICE PROJECTS

Part I General

Section 1. Purpose and Scope of Procedure This Operating Procedure sets forth regulations relating to the operation of specific types of professional and service projects. The material contained herein should be regarded as a series of operating principles derived from the experience of the Work Projects Administration in the conduct of a program of professional and service projects. These principles, expressed as regulations, are designed to effect the operation of projects in accordance with sound technical and administrative practices, and basic policies of the Work Projects Administration, such as those relating to competition with private industry, displacement of personnel or public agencies, performance of normal functions of public agencies, public benefit of work, etc.

Eligible activities which may be prosecuted under the respective types of projects are found in Operating Procedure No. G-1. The present Operating Procedure carries forward from that point, covering specific limitations as to types of activities which may be conducted, general policies and objectives, supervision and project personnel requirements, including the use of advisory committees, operation of project activities, including the location of project units and provisions relating to physical facilities, relations between the project and outside agencies and between the project and other parts of the Work Projects Administration in the initiation and conduct of

(January 10, 1940)

specific units of work, and other matters concerning techniques of operation, and disposition of the final product of the project. Detailed instructions and suggestions concerning techniques of project operation are found in WPA Technical Circulars, references to which appear in the appropriate sections.

It is expected that projects will be conducted efficiently in accordance with high professional and administrative standards of operation, and, in such a manner as to meet most adequately the needs of the community and the stated objectives of the projects. Project operations shall be within the limitations of the project approval and of WPA rules and regulations including those set forth in this Operating Procedure.

The following sections cover most of the professional and service projects operated by the Works Projects Administration; omission of a type of activity is not to be interpreted as prohibiting such activity, unless it is specifically barred.

(January 10, 1940)

Section 32. Art Policies - Allocation and Loan of Works of Art.

A. General Policy Works of art produced under the WPA Art Program may be allocated to public agencies, supported in whole or in part by tax funds, or may be loaned to non-profit public institutions incorporated and operated exclusively for educational, scientific, and charitable purposes. No work of art may be contracted for or may be allocated or loaned which will replace the usual service or activities provided for in the budget of such agencies or institutions. For the purposes of this section the word "allocated" shall mean the transfer of title.

Care should be exercised in the execution of the proper request form for allocation or loan of works of art to indicate whether the department or institution for which the work is undertaken is tax-supported or nonprofit, and whether the works of art produced under the project are to be allocated or loaned. Art work may be undertaken for and allocated to departments of federal, state, county, and municipal governments. Art work may also be loaned to nonprofit institutions acting as cooperating sponsors provided that works produced under the project remain the property of the official sponsor or co-sponsor. This also applies to craft articles produced by artists, craftsmen, and designers who are regularly employed in fine arts activities and to certain craft articles developed in crafts production projects (see section 33 of this Operating Procedure).

Works of art shall not be undertaken which are intended for use in buildings which come under the jurisdiction of the Public Buildings Administration, Federal Works Agency, unless the Public Buildings Administration appears as co-sponsor. Requests for such proposed work will be considered only where funds are not available for its execution through the Section of Fine Arts of the Public Buildings Administration. REQUEST FOR ALLOCATION, DPS Form 8, for such work shall be forwarded to the Director of the WPA Art Program for clearance with the Section of Fine Arts of the Public Buildings Administration. The types of buildings which are under the Public Buildings Administration are Federal Court Houses, post offices, marine hospitals, immigration stations, mints and other buildings constructed by this agency.

Work may be undertaken by the WPA Art Program for Federal departments such as the War Department, Navy Department, National Park Service, U.S. Forest Service, Veterans' Administration and others. Buildings under these departments include Army barracks, officers' quarters, armories, Army hospitals, Veterans' homes and hospitals, Civilian Conservation Corps camps and National Park Museums, etc.

(January 10, 1940)

Co-sponsors shall operate through the official sponsor in securing allocations of works of art and in the making of contributions. Where the official sponsor does not have the facilities to handle such transactions directly, the Work Projects Administration may be authorized by the official sponsor to allocate works of art to co-sponsors and to receive contributions from co-sponsors. In all cases, contributions shall be credited to the official sponsor.

Following is a suggested form of letter, to be submitted in duplicate, for the delegation of such authority:

The (Name of Official Sponsor) as the official sponsor of the (State) Art Project of the Work Projects Administration, Federal Works Agency, hereby authorizes the Work Projects Administration, to make allocations of works of art, executed by the (State) Art Project, in our behalf and to accept contributions in cash or in kind from public tax-supported agencies eligible as co-sponsors which shall be credited as sponsors' contributions on our behalf. All such contributions shall be made payable to the Treasurer of the United States, and shall be deposited with a Disbursing Officer of the United States Treasury in a Special Deposit Account to be used for the general purposes of the WPA Art Program.

Loans of works of art to co-operating sponsors and contributions to an Art project from co-operating sponsors may be made only through the official sponsor or with the approval of the official sponsor through a co-sponsor. Transactions on account of loans to or contributions from co-operating sponsors may not be handled directly by an Art project; responsibility for such transactions with co-operating sponsors shall remain with the official sponsor or, with the approval of the official sponsor, responsibility shall remain with a co-sponsor.

Care shall be exercised to ensure that allocations or loans of works of art do not compete with private markets. In making allocations or loans to institutions whose functions include the purchase of works of art or whose budget provides for such purchases, evidence shall be submitted to show that such allocations or loans from the Federal government are in addition to and not in lieu of purchases from the outside.

B. Requests for Allocation or Loan of Works of Art Allocations of works of art may be made to departments of Federal, state, county and municipal governments and other institutions supported in whole or in part by tax funds. When requests are received from eligible agencies by the State Art project and specific works of art agreed upon, REQUEST FOR ALLOCATION, DPS Form 8, shall be executed.

(January 10, 1940)

Loans of works of art may be made to nonprofit public institutions incorporated and operated exclusively for educational, scientific and charitable purposes. Murals, architectural sculpture and other works of art which become a permanent part of a structure are not eligible for loan to nonprofit institutions. Requests for loan shall be made through the official sponsor, or with the approval of the official sponsor, through a co-sponsor. When requests are received from eligible agencies by the State Art project and the specific works of art agreed upon, REQUEST FOR LOAN , DPS Form 9, shall be executed.

When requests from eligible institutions are received for works of art, the proper request form prepared in quadruplicate shall be executed. The full name and address of the institution, listing of works, delivery instructions, etc., shall be filled in completely. Where evidence is required as to the eligibility of an institution to receive works, copies of such evidence shall be attached to all copies of the request forms. There shall also be attached information concerning the sponsors' pledges of contributions in cash or kind. The request form shall be signed in duplicate by the official representative of the institution. The State Art Supervisor and the State Director of Professional and Service Projects shall indicate their approval by signing in the designated space. The two signed copies shall be forwarded to the Director, WPA Art Program, Washington, D.C., who will countersign and return to the State Art Supervisor for further attention.

Posters, record photographs, diagrams, charts and similar items are available for allocation only to tax-supported institutions and organizations. REQUESTS FOR ALLOCATION, DPS Form 8, need not be executed for items in this class, but the procedure covering receipt for works of art as described in subsection E of this section shall be followed.

C. Record of Works of Art A RECORD CARD, DPS Form 10, shall be prepared by the State Art project on the completion of each painting, piece of sculpture and mural; for each copy of etchings, lithographs, etc.; and for any other work of art produced, but need not be made for "record photographs," posters or similar items and Index of American Design Plates. (See WPA Technical Series, Art Circular No. 3, Index of American Design manual.)

Section I of RECORD CARD, DPS Form 10, shall be filled out as soon as a work of art has been completed. Section II shall be filled out when a work of art is allocated or loaned to some agency or institution. Section III shall be filled out when a work of art is sent to Washington for national display or circulating exhibitions.

(January 10, 1940)

*Loans of works of art may be made to public institutions or private institutions operated by nonprofit associations to which the public has access free of charge and which are incorporated and operated exclusively for educational, scientific and charitable purposes. Murals, architectural sculpture, and other works of art which become a permanent part of a structure are not eligible for loan to nonprofit institutions. Requests for loan shall be made through the official sponsor, or, with the approval of the official sponsor, through a co-sponsor. When requests are received from eligible agencies by the State art project and the specific works of art agreed upon, REQUEST FOR LOAN , DPS Form 9, shall be executed.

When requests from eligible institutions are received for works of art, the proper request form prepared in quadruplicate shall be executed. The full name and address of the institution, listing of works, delivery instructions, etc., shall be filled in completely. Where evidence is required as to the eligibility of an institution to receive works, copies of such evidence shall be attached to all copies of the request forms. There shall also be attached information concerning the sponsors' pledges of contributions in cash or kind. The request form shall be signed in duplicate by the official representative of the institution. The State Art Supervisor and the State Director of Community Service Programs shall indicate their approval by signing in the designated space. Request forms shall be forwarded to the Director, WPA Art Program, Washington, D.C., for countersignature when such requests involve (1) murals, architectural and monumental sculpture, and other works of art that become a permanent part of a structure; and (2) interstate allocations and loans. All other requests for allocation or loan shall be considered approved when signed by the State Director of Community Service Programs.

Posters, record photographs, diagrams, charts and similar items are available for allocation only to public institutions and organizations. REQUESTS FOR ALLOCATION, DPS Form 8, need not be executed for items in this class, but the procedure covering receipt for works of art as described in subsection E of this section shall be followed.

C. Record of Works of Art A RECORD CARD, DPS Form 10, shall be prepared by the State Art project on the completion of each painting, piece of sculpture and mural; for each copy of etchings, lithographs, etc.; and for any other work of art produced, but need not be made for "record photographs," posters, and similar items and Index of American Design Plates. (See WPA Technical Series, Art Circular No. 3, Index of American Design manual.)

Section I of RECORD CARD, DPS Form 10, shall be filled out as soon as a work of art has been completed. Section II shall be filled out when a work of art is allocated or loaned to some agency or institution. Section III shall be filled out when a work of art is sent to Washington for national display or circulating exhibitions.*

(Revised June 10, 1941)

If any agency or institution which has received a work of art on allocation or loan desires to be released from the responsibility of custody of the work, the official representative of the agency or institution shall communicate with the Director of the WPA Art Program, Washington, D.C. If arrangements for return of the work of art to the state are completed, the record card will be returned to the State Supervisor of the Art project.

In forwarding to the Washington office etchings, lithographs, woodcuts, or other graphics, it will not be necessary to prepare a separate DPS Form 10, for each print of such items. A single record card shall be prepared for each design in the shipment, and showing the following information.

1. Number of prints in the edition;
2. Number of prints in the shipment;
3. Serial or other identification numbers of prints shipped.

As section II of the record card will not be used in the case of works of art shipped to the Washington office, the above information may be entered in section II by obliterating present captions and substituting new ones.

In order to avoid unnecessary photography by the Washington office of works of art sent to Washington, it is requested that the space provided following "photographs" in section III of the record card be checked, if the work has been photographed and prints are available.

It will be noted that the Washington file of DPS Forms 10 will not comprise an index of all works of art produced under the WPA Art Program; rather, it will be a file of those works forwarded to Washington or works allocated or loaned by the states with Washington approval.

In the shipment to Washington of preliminary sketches and models for approval of the Director of the WPA Art Program, it will not be necessary to forward a shipping card on the works shipped. Such shipments will be covered by SHIPPING RECEIPT, DPS Form 11, in duplicate. A signed copy of the shipping receipt will be returned to the State Art Supervisor and will serve as a record of the transaction.

The record card procedure outlined above will not apply to works of art which are loaned for temporary exhibition purposes. A record of works of art loaned for this purpose will be maintained by the use of SHIPPING RECEIPT, DPS Form 11, which shall be executed with a list of the works contained in each shipment, and forwarded to the cosignee for signature and returned to the cosignor.

(January 10, 1940)

D. Identification of Works of Art IDENTIFICATION CARD, DPS Form 12, shall be prepared and firmly affixed to the back of each picture or base of each sculpture, diorama, model or similar work. In the case of oil paintings, the card should not be glued to the back of the canvas, but shall be glued or tacked to the stretcher.

A brass tague [sic] reading (Name of State) "WPA Art Program" shall be screwed to the lower center of the frame or otherwise suitably attached to each work of art. In the case of unframed pictures, a sufficient number of these metal tags should be given the institution with complete instructions for affixing to the work after framing. A standard design shall be used for all metal tags, a sample of which will be issued by the Washington office.

E. Receipt for Works of Art A RECEIPT FOR ALLOCATION, DPS Form 13, and a RECEIPT FOR LOAN, DPS Form 14, shall be prepared in quadruplicate for each item or group of items allocated or loaned to any agency or institution. Upon the delivery of the works of art, the official representative of the institution shall sign two copies and retain the third copy for his own record. One signed copy shall remain in the state files, clipped to the duplicate of the proper request form. The original of the receipt, together with the original of the request form and record card shall be sent immediately to the Director of the WPA Art Program, Washington, D. C., to be placed in the central record file of allocations and loans of works of art maintained in Washington, D. C. In connection with the loan of works of art, a copy of the request for loan and receipt for loan shall be forwarded to the sponsor or co-sponsor.

Samples of the forms required are attached. The forms shall be reproduced by the states.

F. Sponsors Contributions Sponsors receiving allocations or long term loans of works of art are expected to make contributions to the Art project to cover approximately the various nonlabor costs of project operation, and/or special services required by the project. A schedule of suggested contributions will be provided by the Director of the WPA Art Program, Washington, D. C.

In the case of such cash contributions, whenever possible, the transmittal letter covering such cash contribution shall permit the use of the contribution for the general purposes of the Art project; and when a cash contribution is made by a co-sponsor, the transmittal letter shall state that the contribution is made in behalf of the official sponsor, and that rights to accounting and refund are waived. This will permit the deposit of all cash contributions in a pooled special deposit account. Checks shall always be made payable to the Treasurer of the United States.

(January 10, 1940)

Contributions from nontax-supported agencies acting as cooperating sponsors shall always be made through the official sponsor or, with the approval of the official sponsor, through an eligible co-sponsor (for instructions on accounting for sponsor's contributions, see Operating Procedure No. F-53).

(January 10, 1940)