
Part 3 Post-Award

Section 04 Property

A. Principles

1. **Purpose.** This Grants Policy Directive (GPD) specifies policies and responsibilities for HHS Operating Divisions (OPDIVs) for the review, approval, management, and disposition of the various types of property that may be present under HHS grants.
2. **Scope.**
 - a. The policies contained in this GPD apply to all HHS grant programs and awards.
 - b. This GPD applies to the following types of property (and related activities): equipment, real property and major alteration and renovation, minor alteration and renovation, debt instruments, inventions and patents, and supplies.
 - c. This GPD applies only to property acquired, developed, modified, improved, or constructed in whole or in part as an allowable direct cost to HHS grants or for which Federal financial participation is claimed. It may be used as guidance for such costs that are part of a grantee's indirect or facilities and administrative (F&A) costs in conjunction with any applicable cost principle requirements and negotiated indirect cost or F&A rate agreement(s).

B. Policy

1. **General.**
 - a. Requirements applied to property covered by this GPD shall be consistent with the regulatory coverage at 45 CFR parts 74 and 92 in terms of (1) classification of property, and (2) type and duration of accountability. Absent authority provided in those regulations or in governing statutory or regulatory requirements, property management requirements may not be more liberal or more restrictive unless allowed by an approved deviation or, in the case of more restrictive requirements, a designation of the recipient as "high risk/special award conditions."

- b. Awarding offices should review applications that include proposed costs for alteration and renovation (major or minor), acquisition, construction or modification of real property, or equipment in sufficient detail to ensure that (1) the costs are permitted under the program or award, (2) the applicant has adequate systems in place to manage the property, (3) the property is necessary for the successful performance of the grant, and (4) any potential issues, e.g., procurement issues, less-than-arms' length leases, or generation of program income, are addressed in the terms and conditions of award.
- c. The allowability of costs for particular types of property and related expenditures will be based on the governing statute, regulations, including applicable cost principles, this GPD and the OPDIV implementation, and the terms and conditions of individual awards.
- d. Property requirements placed on awards shall (1) ensure that Federal interests in the property during and after the period of grant support are adequately protected, (2) be appropriate for the recipient (both by type of recipient and the applicable HHS grants administration regulations, and in relation to the capabilities of the recipient organization), (3) be consistent with the purpose of the project, and (4) have a benefit consistent with any cost of grantee implementation or awarding office oversight.
- e. Day-to-day post-award property management under HHS grants is generally the responsibility of the recipient organization.

2. Equipment.

- a. Limitations or controls on the acquisition or management of equipment by grantees should be based only on:
 - (1) Limitations in a program's authorizing statute or program regulations;
 - (2) Programmatic concerns expressed by objective reviewers, e.g., the property is not of a type suitable for the project;
 - (3) Any applicable regulatory requirements in 45 CFR parts 74 or 92;
or
 - (4) Property management system concerns based on documented findings in audit reports, site visits, or other assessment or monitoring information.

- b. Title to equipment acquired by recipients, including commercial organizations, should vest in the recipient upon acquisition.
- c. Federally-owned equipment that has not been declared excess or surplus pursuant to the Federal Property Management Regulations may be provided for recipient use under a revocable use license agreement. Historically, these situations have been limited to ones in which a grantee also is an HHS contractor and has utilized equipment that is titled to the Federal government; however, use of this authority is not limited to these circumstances. HHS retains title to such equipment and it is subject to use and disposition as provided in the use agreement. (The criteria for loans of federally owned property are included in the HHS Logistics Management Manual.)
- d. For purposes of 45 CFR 74.34(f)(3) and 45 CFR 92.32(d)(2), statistical sampling is an acceptable basis for conducting the physical inventory of equipment and reconciliation.
- e. For research awards to non-profit institutions of higher education or non-profit organizations whose principal purpose is conducting scientific research, HHS may use the authority in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) to vest title to tangible personal property acquired with HHS funds in the grantee without further obligation to the Federal government, except those obligations contained in 45 CFR 74.34(h)(1), (2), and (4). If HHS is using this exemption, the Notice of Grant Award should explicitly state that title is being vested pursuant to 31 U.S.C. 6306 and the property is considered exempt.

3. Real Property and Major Alteration and Renovation (A&R).

- a. Real property and major A&R (including such terms as “modernization,” “remodeling,” or “improvement”) of an existing building may be acquired or constructed under an HHS grant only when the authorizing statute for the program contains specific authority permitting that activity.
- b. If an authorizing statute allows for major A&R, the OPDIV must distinguish for its staff and recipients the thresholds and/or extent of activity that differentiate major A&R from minor A&R (see paragraph B.4. below). This is to ensure that OPDIV approval is sought when appropriate, Federal funds are spent only within the latitude provided by Congress, and Federal interests are adequately protected.

- c. Trailers and modular units generally will be considered real property but may be considered equipment on the basis of a case-by-case review of planned use, duration of use, and factors specific to that situation.
- d. The awarding office must ensure that the recipient files a Notice of Federal Interest (NFI), i.e., a lien or other notice of public record, for the following types of grants or activities: construction grants, grants for other purposes that involve construction (including major A&R), and grants that involve the acquisition of an existing facility.
- e. In unusual circumstances, major A&R may occur on a leased facility. This type of activity may be undertaken only if there is applicable statutory authority for major A&R of existing buildings, the term of the lease is long enough for the full value of the grant-supported improvements to benefit the grant activity, and it is approved in advance by the OPDIV Chief Grants Management Officer (GMO). In reviewing this type of request, the Chief GMO also will take into account the purpose of the grant, the duration of the grant, and the expected life and use of the facility for grant-supported purposes.
 - (1) The NFI must be filed at the time of acquisition or when the construction (or major A&R) of the real property begins to ensure that public documents accurately indicate that the property was acquired, constructed, or improved with Federal funds, and that, during its useful life as defined in the NFI, HHS use and disposition requirements apply.
 - (2) The principal intent of the NFI is to ensure that the Federal interests in the property are not subordinated to those of non-Federal parties. Unless a deviation is approved in accordance with GPD 1.03 (whether on a single-case or class basis), the Federal interest in real property may not be subordinated.
- f. The duration of the recipient's obligation to the Federal government for use of real property shall be as specified in the governing statute or regulations, or as provided in 45 CFR 74.32(b) or 45 CFR 92.32(c).
- g. In developing program regulations, program guidance, or terms and conditions of award related to major A&R, the OPDIV/awarding office should consult with the Office of the General Counsel (OGC).

4. **Minor Alteration and Renovation (A&R).**

- a. All A&R not covered under paragraph B.3. above is termed “minor A&R” for purposes of this GPD.
- b. Minor A&R is not an allowable activity/cost under grants to individuals or grants for limited purposes, such as support of conferences. For all other types of grants and recipients, the allowability of minor A&R should be determined on the basis of any applicable statutory authorities or restrictions and OPDIV or other policies (including any applicable program regulations).

In addition, minor A&R is allowable only if:

- (1) The building has a useful life consistent with program purposes (and, if leased, a lease covering a period consistent with use of the altered building);
 - (2) The building can be readily modified to meet program requirements;
 - (3) The space involved will actually be occupied by the project or program, and
 - (4) Any required HHS prior approval is obtained.
- c. OPDIVs may establish their own prior approval threshold(s) for post-award rebudgeting for minor A&R activities. This threshold should be based on the type of program/project/recipient as well as the average size of their grant awards. Regardless, prior approval should be required for any proposed minor A&R project that would result in rebudgeting exceeding 25 percent of the total approved budget amount for that budget period. OPDIVs also may designate thresholds within the minor A&R category that trigger a requirement for more extensive documentation and the need for architectural/engineering advice.

OPDIVs also may adopt aggregate ceilings or other quantitative indicators that invoke the requirement for awarding office review and approval.

5. **Inventions and Patents.**

Inventions and patents are governed by the requirements of 37 CFR part 401, the Department of Commerce regulations that implement the Bayh-Dole Act of 1980 and serve as government-wide policies for inventions resulting from government-funded research. Consistent with maximizing

the benefits of government-funded research while recognizing the need to stimulate technological innovation, recipients may take title to inventions conceived or first actually reduced to practice in the performance of an HHS award as long as they comply with applicable requirements. The government retains the right to obtain, reproduce, publish and use the invention as provided at 45 CFR 74.36(c) and 45 CFR 92.34.

6. Debt Instruments.

- a. Debt instruments may be of several types with varying management and accountability requirements.

(1) Grantee as a Debtor.

When an HHS awarding office assists in financing the acquisition or construction of real property (or major A&R), the awarding office must require that any mortgage agreement entered into by the recipient specifically provide that, in the event of default, the OPDIV/awarding office may, at its option and in lieu of repayment based on sales proceeds, assume the role of mortgagor and continue to make payments on the mortgage. OPDIVs should consult the General Law Division, OGC before assuming the role of mortgagor. Amounts owed by the grantee to HHS will be determined and collected pursuant to the Department's debt collection process and requirements.

(2) Grantee as a Creditor

For programs that allow or require the grantee to enter into financing arrangements with third parties, the following applies to the management and disposition of the resulting debt instruments:

- (a) The terms and conditions of award must be consistent with any governing programmatic statutory or regulatory provisions.
- (b) The terms and conditions of award must address the grantee role and the HHS role, if any, with respect to those third parties, and any required provisions for those third-party agreements. At a minimum, the award must address grantee responsibilities and liabilities in the event of non-payment or late payment by the third party, grantee accountability, both during and after the end of the grant, and the HHS role, if any, in the event of early termination of the grant.

- (c) For accountability purposes, debt instruments (other than mortgages on real property acquisition or construction financed with Federal funds) shall be treated in accordance with 45 CFR 74.36(e)).

7. Supplies.

HHS awarding offices may not place any special management or disposition requirements (beyond those of 45 CFR 74.35 and 92.33) on any supplies that are appropriately chargeable as direct costs to HHS grants. This is consistent with the policy that recipients have title to supplies, are responsible for managing that category of property, and may, as they deem necessary, establish organizational requirements more restrictive than those imposed by HHS.

C. Responsibilities.

1. Chief Grants Management Officer.

a. Alteration and renovation.

- (1) The OPDIV CGMO shall establish the OPDIV's policies for approval and documentation requirements for A&R activities, including minor A&R as provided in paragraph B.4 above. At a minimum, the policy for minor A&R must indicate the threshold at which the recipient must obtain prior approval for post-award changes resulting in minor A&R activities and the required documentation. Documentation requirements and applicable thresholds for architectural/engineering review should be developed in coordination with the servicing engineering office.
- (2) The CGMO is also responsible for ensuring that standard award language related to prior approval for minor A&R is developed and provided to the OPDIV's GMOs to incorporate in applicable awards.
- (3) The CGMO also will be the approving authority for requests for major A&R of leased facilities and actions that represent single-case deviations from the OPDIV's policy on approval of minor A&R. The Office of Grants, Assistant Secretary for Resources and Technology, HHS, must approve class deviations.

- b. Architectural/engineering advice.

Unless an OPDIV has its own servicing engineering office, the CGMO is responsible for establishing arrangements with an HHS office(s) to provide such services. Currently, the Office of Research Facilities Development and Operations, NIH; and the Office of Engineering Services, HRSA provide architectural/engineering services.

2. Grants Management Officers. Grants Management Officers (GMOs) are responsible for:

- a. Coordinating with OPDIV/awarding office property management staff on matters involving federally-owned property and consulting with them, as appropriate, on other property management considerations under grants.
- b. Coordinating with OGC on invention and patent matters.
- c. Obtaining architectural/engineering advice from the responsible OPDIV office or Office of Engineering Services on minor A&R projects as well as on major A&R and construction projects in accordance with OPDIV policies.
- d. Ensuring that applicable statutory and regulatory requirements for acquisition or construction of real property or major A&R are included in the terms and conditions of award. These may include environmental policies, design requirements, building and safety codes, insurance requirements, and labor standards.
- e. Ensuring that Notices of Grant Award include necessary terms and conditions to the property requirements or authorities of 45 CFR parts 74 or 92 and this GPD, including the authority to exempt property from accountability, requirements for NFIs, and requirements concerning debt instruments.
- f. Ensuring that recipient acquisitions of equipment or acquisitions involving the A&R (major or minor) or construction of real property are consistent with the procurement provisions of 45 CFR parts 74 and 92.
- g. Ensuring that systems are in place to monitor any required post-performance compliance, e.g., reporting of income received after the period of support, continued use of facility for purposes consistent with those of the award, and recoupment of the Federal share of sales proceeds or amortized value.