SUBJECT: **Property Management**

REFERENCE: Workforce Investment Act of 1998, Sec. 173, Sec. 184, Sec. 193, as amended, and Sec. 195; Revised Continuing Appropriations Resolution, 2007; 29 CFR Part 97; 29 CFR Part 95; 20 CFR 667.260; TEGL 3-07; TEGL 7-04; and the One-Stop Comprehensive Financial Management Technical Assistance Guide.

BACKGROUND: State and local governments are required to comply with "Common Rule" requirements found at 29 CFR Part 97. These uniform requirements govern the title, use, and disposition of real property, equipment, and supplies purchased through Workforce Investment Act (WIA) funding. Nonprofit entities, institutions of higher education, and commercial organizations must follow the requirements of OMB Circular A-110, as codified at 29 CFR Part 95.

In 2001, the Office of Inspector General (OIG) reviewed shared facility arrangements between a State Workforce Agency (SWA) and several Local Workforce Investment Boards (LWIBs) within that state. Although the review report recognized that some real property problems were solved with the enactment of WIA, it disclosed that some new problems were created. The principal new problem was the proper allocation of occupancy costs when properties acquired (in whole or in part) with Reed Act funds, Wagner-Peyser funds, or Unemployment Insurance grant funds are occupied by other One-Stop partner programs. TEGL 7-04 provided guidance on the treatment of costs, interpretations of federal law affecting the allocation of space occupancy costs in SWA buildings used for One-Stop purposes based in part on the resolution of OIG's findings. However, when the Revised Continuing Appropriations Resolution, 2007, was enacted, it amended Section 193 of the Workforce Investment Act of 1998. TEGL 3-07 provides procedures for implementing this amended Section 193.

POLICY: **Equipment Acquired with WIA Grant Funds**

Definition: "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." [29 CFR 97.3]

Title

Title to equipment acquired with WIA grant funding shall vest upon acquisition in the grantee or subgrantee, subject to conditions of 29 CFR 97.32 or 29 CFR 95.34, as applicable.

State

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

Other Governmental Recipients and Subrecipients

When equipment is acquired with WIA grant funds by **governmental recipients/subrecipients** other than the State, then these **use** standards must be followed:

- Equipment shall be used by the grantee or subgrantee 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 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 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 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.

When equipment is acquired in whole or in part with WIA grant funds by **governmental recipients/subrecipients** other than the State, 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 is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

When the original or replacement equipment is acquired with WIA grant funds by **governmental recipients or subrecipients** other than the State 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.

- In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

<u>Non-Governmental Entities</u>
When equipment is acquired with WIA grant funds by **non-governmental recipients**, 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.

- 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.

When equipment is acquired in whole or in part with WIA grant funds by **non-governmental recipients**, 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.

- 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.

- 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.

When the original or replacement equipment is acquired with WIA grant funds by **non-governmental recipients** 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.

Federally Owned Equipment
In the event a grantee or subgrantee is provided federally-owned equipment:

- Title shall remain vested in the federal government.

- Grantees or subgrantees 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 shall request disposition instructions from the federal agency.

Real Property
Definition: "Real property means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment." [29CFR97.3]

Title to real property acquired under a grant or subgrant shall vest upon acquisition in the grantee or subgrantee respectively.

Real property shall be **used** for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

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.

Use of Certain Real Property for One-Stop Delivery System

As noted below, the amended Section 193(a) of the Workforce Investment Act, effective February 15, 2007, transfers existing equity in real property acquired or amortized with Unemployment Compensation (UC) and Wagner-Peyser (W-P) grant funds to the states for use in carrying out WIA, UC, and W-P 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

WIA has never permitted 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. Now the amended Section 193(b) has clarified further: *"A State shall not use funds awarded under this Act, the Wagner-Peyser Act, or Title III of the Social Security 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."*

Section 193, as amended, no longer authorizes the use of properties with equity acquired using **Reed Act** funds for the WIA One-Stop service delivery system. Properties having

Reed Act equity may be used for the WIA 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.

Occupancy by partner programs in SWA buildings may not be on a cost-free basis. If a State wants to charge One-Stop partners "rent", the amount of rent charged to federal grant recipients and subrecipients may not exceed the allowable premises costs. [Under federal cost principles, allowable premises costs for grantee-owned buildings are limited to depreciation or use allowances, allocable interest cost, and operation and maintenance costs.] Market rent may only be charged to organizations that are non-federally funded.

WIA Title I funds must not be spent on **construction or purchase of facilities or buildings except**:

- To meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

- To fund repairs, renovations, alterations and capital improvements of property, including SESA real property (identified at WIA Section 193) using a formula that assesses costs proportionate to space utilized; previously JTPA owned property which was transferred to WIA Title I programs; Job Corps facilities (as authorized by WIA Section 160(3)(B); and to fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area.

Current operating costs for repairs and alterations are allowable regardless of whether the property is owned or rented. Renovations and capital improvements to real property owned or leased by grantees or subgrantees are considered capital expenditures. As such, these costs are unallowable unless they are within one of the exceptions addressed above and as specified in 20 CFR 667.260(b) and then only as direct charges approved in advance by the awarding agency.

Supplies

Definition: Supplies means all tangible personal property other than equipment (as defined earlier in this policy).

<u>State and Other Governmental Recipients and Subrecipients</u>
Title to supplies acquired under a WIA grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

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 other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

<u>Non-Governmental Entities</u>
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.

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.

Intangible Personal Property

<u>Copyrights</u>
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, subgrantee or a contractor purchases ownership with grant support.