

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

SUBJECT: Property Management and Disposition

NUMBER: 2.10.11


EFFECTIVE: June 2013

REVISED: Dec 2016


SANDY CDBG-DR

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APPROVAL:



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PURPOSE:

The purpose of this policy is to ensure that Federal regulations are followed by the grantee and subrecipients whenever CDBG-DR-DR funds are used to purchase any real or personal property. Further this policy details the requirements for use, tracking and disposition of property acquired with CDBG-DR-DR funds.

This policy is consistent with State of New Jersey policy regarding property management and disposition, and is compliant with 2 CFR Part 200 and the relevant sections:

Real Property	2 CFR 200.311
Equipment	2 CFR 200.313
Supplies	2 CFR 20.314
Intangible Property	2 CFR 20.315.

POLICY:

The following guidelines apply to any real or personal property purchased with CDBG-DR-DR funds:

- Property can only be acquired with CDBG-DR-DR funds for a *specific purpose* that must be approved by the grantee and should be made a part of the Subrecipient Agreement.
 - The use of that property for the *approved purpose must continue*; in the case of personal **property**, generally for if the subrecipient owns it and the property is needed for the CDBG-DR-DR activity, and in the case of real **property** (acquired or improved with CDBG-DR funds in excess of \$25,000), generally for at least 5 years following the expiration of the Subrecipient Agreement.
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- The subrecipient is responsible for controlling *the use* of the property (in accordance with its intended purpose) and *take good care* of it (that is, take adequate steps to prevent its damage, theft, or loss).
- If the property is no longer needed, the subrecipient can dispose of it but only according to specific rules (such as paying back the grantee, accounting for program income, etc.).
- Property can only be acquired with CDBG-DR-DR funds for a *specific purpose* that must be approved by the grantee and should be made a part of the Subrecipient Agreement.
- The use of that property for the *approved purpose must continue*; in the case of personal **property**, generally for if the subrecipient owns it and the property is needed for the CDBG-DR-DR activity, and in the case of real **property** (acquired or improved with CDBG-DR funds in excess of \$25,000), generally for at least 5 years following the expiration of the Subrecipient Agreement.
- For any property purchased with CDBG-DR-DR funds, the subrecipient is required to *keep accurate records* for it (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, and other inventory types of data) and to provide a copy of all property records on an annual basis to the responsible organization.
- The subrecipient is responsible for providing timely updates when new property is obtained or no longer in use.
- If the property is no longer needed, the property must be returned to the responsible organization for redistribution or disposition.

I. Definitions

For the purposes of these Federal regulations, “property” is classified according to the following distinct categories:

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- **Responsible Organization:** “Responsible Organization” for a subrecipient means the organization that monitors grant activities, policies, and, procedures in addition to countersigning the subrecipient agreement. When there is not a monitoring origination the “Responsible Organization” is the Grantee.
- **Real property:** “real property” means land, including any improvements to and structures located on the land, but excluding any movable machinery or equipment.
- **Personal property:** “personal property” is any kind of property other than real property. Personal property can be *tangible* (such as supplies, furniture, and equipment), or *intangible* (such as copyrights, patents, and inventions).

Further distinctions can be made between:

- **Non-expendable personal property**, which generally is considered to include *tangible* personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit.
- **Expendable personal property**, which includes all *tangible* personal property other than non-expendable personal property.

The Federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, a subrecipient’s property management system must provide for **accurate records, the conduct of regular inventories, adequate maintenance and control, and proper sales procedures**. Subrecipients must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

A. Real Property

For *grantees*, the use of real property is governed by 24 CFR 570.505. For real property acquired or improved in whole or in part with CDBG-DR funds in excess of \$25,000, the grantee cannot change the use or planned use of the property (including the beneficiaries of such use) without first providing affected citizens notice and opportunity to comment, and determining that either:

- 1) The contemplated new use meets one of the National Objectives and is not a building for the general conduct of government.
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- 2) The contemplated new use is deemed appropriate (after consultation with affected citizens) but will not meet a National Objective. In this latter case, the grantee must reimburse the CDBG-DR program in the amount of the current fair market value of the property, less the value attributable to the non-CDBG-DR portion of the acquisition or improvements.

The Subrecipient Agreement must be **explicit** about the use of any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG-DR funds in excess of \$ 25,000. For such instances, **24 CFR 570.503(b) (7)** mandates that such real property either:

- Must be used by the subrecipient to continue to meet one of the CDBG-DR program's National Objectives **for at least 5 years after the expiration of the Subrecipient Agreement** (or a longer time as specified by the grantee in the Subrecipient Agreement); or
- If a National Objective is not met during this time period, the grantee must be **reimbursed for the current fair market value**, less any portion of the value attributable to non-CDBG-DR funds.

2 CFR 200.311 provides additional detail on the treatment of Real property:

(a) *Title*. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use*. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) *Disposition*. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

1. Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of
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real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

2. Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
3. Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

B. Personal Property — Equipment

For governmental subrecipients

- **Title:** While the equipment remains in use for the original program; the title to equipment acquired with CDBG-DR funds is vested in the subrecipient, subject to the conditions described in the following section. After which the title reverts to the responsible organization.
 - **Use:** Equipment purchased with CDBG-DR funds or other forms of Federal assistance must be used by the subrecipient in the program or project for which it was acquired, and as long as needed, whether or not the program or project continues to be supported by Federal funds.
 - When no longer needed for the original program or project, the equipment must be returned to the responsible organization, or upon authorization from the responsible organization may be used in other activities supported by Federal Agencies.
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- The responsible organization must make the acquired equipment available for use on other projects or programs currently or previously supported by the Federal Government provided that such use will not interfere with the work on the project or program for which the equipment was originally acquired.
 - A subrecipient is **prohibited** from using CDBG-DR-acquired equipment **to provide services for a fee to compete unfairly** with private companies that provide equivalent services unless specifically authorized by Federal statute.
 - With the approval of the responsible organization, equipment acquired with CDBG-DR funds may be used as **a trade-in on replacement property**.
 - For depreciation purposes, and IRS depreciation schedule is acceptable.
 - **Management requirements:** For equipment (including replacement equipment) acquired in whole or in part with CDBG-DR funds, the subrecipient must have procedures and control systems in place to:
 - Keep **adequate equipment records**, which must include information on:
 - Property description.
 - Identification.
 - Serial Number
 - Funding source (grant number).
 - Title holder.
 - Acquisition date and cost.
 - Federal share of cost.
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- Location, use, and condition.
 - Unit acquisition cost.
 - Disposition data.
- The subrecipient must provide the responsible organization with an updated copy of all **equipment records annually**.
 - **Conduct a physical inventory audit** of the property no less often than every 2 years, with a reconciliation of the inventory results with the equipment records.
 - Ensure adequate **safeguards for preventing loss, damage, or theft** of property.
 - Maintain the equipment in **good condition**.
 - **Disposition:** When original or replacement equipment acquired with CDBG-DR funds is no longer needed for the original project or program or for other activities currently or previously assisted with Federal funds, the following rules of disposition will apply **to governmental subrecipients:**
 - 1) Equipment with a **current per-unit fair market value of less than \$5,000** must be returned to the responsible organization, or disposed of after authorization from the grantee subject to the conditions in 3) in the following section.
 - 2) Equipment with a **current per-unit fair market value of \$5,000 or more** may *after notice to the grantee* be retained or sold by the subrecipient with the grantee having the right to compensation in an amount equal to multiplying the current fair market value *or* the proceeds from sale by the Federal share (percentage) in the original acquisition price of the equipment.
 - 3) The grantee may reserve **the right to transfer title of the equipment** to the Federal Government or a third party
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In addition, per 24 CFR 570.502(a) (8), in all cases when equipment purchased with CDBG-DR funds is sold, the net proceeds are considered **program income**.

Should there be **non-profit subrecipient** the following applies:

- **Title:** Title to personal property acquired with CDBG-DR funds is vested with the subrecipient, subject to the following conditions:
 - 1) **In all cases** in which personal property is no longer needed by the subrecipient for CDBG-DR activities, it must be transferred to the grantee for the CDBG-DR program or can be retained by the subrecipient after compensation to the grantee (per 24 CFR 570.502(b)(3)(vi)(B)).
 - 2) The grantee may reserve **the right to transfer title of the equipment** to the Federal Government or a third party.
 - 3) In all cases in which personal property is sold, the proceeds will be considered **program income** (24 CFR 570.502(b)(3)(vi)(A)).

2 CFR 200.313 provides additional guidance on the requirements pertaining to purchase, use and disposition of Equipment purchased with CDBG-DR funds.

a. *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

1. Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 2. Not encumber the property without approval of the Federal awarding agency or pass-through entity.
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3. Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

b. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

c. *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

1. Activities under a Federal award from the Federal awarding agency which funded the original program or project,
2. Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

d. During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

e. Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

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f. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

g. *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

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

h. *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

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

C. Personal Property — Supplies

For **governmental subrecipients:**

- Upon termination of the subrecipient's agreement with or award from the grantee, **if there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value, and if such supplies are not needed for any other Federally sponsored programs or project**, the subrecipient must compensate the grantee for the share of such supplies which were acquired with CDBG-DR funds.

For **non-profit subrecipients:**

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- The residual inventory of unused supplies exceeding \$5,000 not needed by the subrecipient for CDBG-DR activities must be transferred to the grantee for the CDBG-DR program or can be retained after compensating the grantee.
- **In all cases** in which the residual inventory of supplies is sold, the proceeds are considered **program income**.

2 CFR 200.314 provides additional guidance regarding Supplies. (See also §200.453 Materials and supplies costs, including costs of computing devices.)

a. *Title.* The title to supplies will vest in the nonfederal entity 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 Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.

b. As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

D. Personal Property — Copyrights and Intangible Property

For **governmental subrecipients** and for **non-profit subrecipients**:

- The Federal Government **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 to any work developed with CDBG-DR funds.
 - Any rights of copyright which a subrecipient or a contractor purchases with CDBG-DR support.
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2 CFR 200.315 provides additional guidance regarding intangible property.

1. Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).
 2. The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
 3. The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
 4. The Federal Government has the right to:
 - a. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
 - b. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
 5. Freedom of Information Act (FOIA). In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
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6. Published research findings means when:

- Research findings are published in a peer-reviewed scientific or technical journal; or
- A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:

- Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
 - Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.
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