

MASSACHUSETTS WORKFORCE DEVELOPMENT SYSTEM

Mass Workforce Issuance

Workforce Issuance No. 07-69

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Associate Directors
DCS Field Managers

cc: WIA State Partners

From: David W. Mackley, Director
Department of Workforce Development

Date: October 17, 2007

Subject: **Property**

Purpose: To provide Local Workforce Investment Boards, One-Stop Career Center Operators and other local workforce investment partners with policy guidance with respect to property management requirements for each subrecipient for all Federal and State programs administered by the Division of Career Services, including Workforce Investment Act programs. This Policy replaces WIA Communication No. 01-46 (Issued 9/28/01).

Background: The Final WIA Regulations became effective on September 11, 2000. The WIA procurement Regulations at 29 CFR Parts 95 and 97 contain the requirements for the acquisition of property. This policy supersedes all Property policies previously issued by either The Commonwealth Corporation or the Division of Career Services (DCS).

Action

Required: All operators are required to use, manage and dispose of equipment acquired under a grant provided by DCS in accordance with this policy. All operators must incorporate this policy into their operating and accounting procedures.

Effective: Immediately

- References:** WIA Public Law 105-220
WIA Regulations at 20 CFR 652, et al
29 CFR Parts 95 and 97
OMB Circulars:
A-21 Cost Principles for Educational Institutions
A-87 Cost Principles for State and Local Governments
A-122 Cost Principles for Non-Profit Organizations
A-102 Administrative Requirements for State and Local Governments
A-110 Administrative Requirements for Institutions of Higher Education,
Hospitals, and Other Non-Profit Organizations
A-133 Audits of States, Local Government, and Non-Profit Organizations
- Inquiries:** Please email all questions to: PolicyQA@detma.org . Also, indicate Issuance number and description.

PROPERTY

REAL PROPERTY

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

The rules for the title, use and disposition of real property are established at 29 CFR Part 97.31 and are described as follows:

Title to real property vests on acquisition in the recipient or subrecipient.

- The acquiring entity has the right to use of the real property “for the originally authorized purposes as long as needed for the (sic) purpose,” but the entity does not have a right to dispose of or encumber (such as a mortgage) its title or other interests without State input.
- When the property is no longer needed for the originally authorized purpose, the entity with title will request disposition instructions from the awarding agency.

Purchase

Subrecipients may *not* use WIA funds to acquire Real Property without the prior approval of DCS. Any subrecipient that owns Real Property must request disposition instructions from DCS prior to disposing of such items, and DCS will discuss disposition instructions with the U.S. Department of Labor (USDOL).

Construction or Purchase of Facilities or Buildings

The WIA Regulations at 20 CFR 667.200 prohibit the use of WIA Title I funds for construction or purchase of facilities or buildings, except:

- (a) To meet a recipient’s, as the term is defined in 29 CFR 37.4, 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.
- (b) To fund repairs, renovations, alterations and capital improvements of property, including:
 - (1) SESA real property, identified at WIA Section 193, using a formula that assesses costs proportionate to space utilized;
 - (2) JTPA owned property which is transferred to WIA Title I programs;
- (c) Job Corps facilities, as authorized by WIA Section 160(3)(B); and

- (d) 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 (WIA Section 173(D)).

Disposition

In disposing of real property, the awarding agency will require one of the following options:

- **Retention of Title.** Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in situations where a grantee or subgrantee is disposing of real property acquired with WIA funds and acquiring other real property to be used for the WIA program, the net proceeds from the disposition may be used to offset the cost of the replacement property.
- **Sale of Property.** Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property.
- **Transfer of Title.** Transfer title to the awarding agency or to a third party designated or approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee's or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

EQUIPMENT

The Definition of equipment is "tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit." The basis for determining acquisition cost is described in 29 CFR 95.2 and 97.3.

Any personal property item with an acquisition cost of \$5,000 or more per unit and a useful life of more than one year is considered equipment that is covered under this policy. Acquisition of equipment with a cost of \$5,000 or more must be approved in writing by DCS prior to purchase. The acquiring entity must use the equipment in the program or project for which it was acquired as long as it is needed. When no longer needed for the original program or project, the equipment may be used in other DCS funded programs or projects.

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 projects or programs funded through DCS; second preference shall be given to projects or programs funded through other Federal programs. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

The equipment cannot be used to provide services for a fee or to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute such as is stated below;

20 CFR Part 652; Part 660 et al

667.200(a)(8) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

§ 667.200(a)(8)(i) When the services, facilities, or equipment are not being used by eligible participants;

§ 667.200(a)(8)(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

§ 667.200(a)(8)(iii) If the income generated from such fees is used to carry out programs authorized under this title.

With the approval of DCS, the acquiring agency may trade in or sell equipment and use the proceeds to purchase replacement equipment. If the equipment is no longer needed for DCS funded programs or projects, the acquiring entity must contact DCS for disposal instructions.

The acquiring agency must meet the following minimum management standards:

- Equipment records must be maintained that include the following data on each piece of equipment: description; serial number; Vendor/Source of Property; title holder; acquisition date and cost; percentage of Federal or State participation in the cost; Federal or State funding stream; location, use and condition of the property; and, any ultimate disposition data including date of disposal and sale price. See enclosed sample property inventory form.
- A physical inventory of the property must be taken and the results reconciled with the property 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 must be developed to ensure adequate safeguards to prevent any loss (including acts of nature such as floods and earthquakes), damage, or theft of the property. Any loss, damage or theft shall be investigated and fully documented; if the Federal or State Government participated partially or wholly in the acquisition of the equipment the recipient shall promptly notify DCS.
- Adequate maintenance procedures must be developed to keep the property in good condition.
- If property is sold (see disposition section), proper sales procedures must be established to provide competition to the extent practicable and result in the highest possible return.

FEDERAL EQUIPMENT

29 CFR Part 97.32(f) states that if a grantee or subgrantee uses federally owned equipment, title will remain vested in the Federal government, and Federal agency rules will apply to its use, management, and disposition. Federal equipment is not expected to be made available for WIA activities or other DCS funded programs.

SUPPLIES

Supplies means all tangible personal property other than equipment

Title to supplies and other expendable property acquired under a federal grant or subgrant vests in the recipient or subrecipient respectively, upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in aggregate fair market value when the award is terminated or completed and if the supplies are not needed for any other DCS funded program or project, the recipient shall retain the supplies for use on non-federal sponsored activities or sell them. In either case, the grant through which the supplies were purchased shall be compensated for the federal share of the supplies.

Recipients may 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.

COPYRIGHTS

1. The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency reserves a

royalty-free, nonexclusive and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use.

2. Recipients are subject to applicable regulations governing patents and inventions, including government-wide 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 Grants, Contract and Cooperative Agreements."
3. The Federal Government has the right to obtain, reproduce, publish or otherwise use the data first produced under an award and to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

Note: The Federal right in this instance "passes through" to contractors. Both subrecipients and vendors must include in their contracts a clause giving notice of the above requirement

OTHER INTANGIBLE PROPERTY

Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of DCS. When no longer needed for the originally authorized purpose, the recipient must contact DCS for instructions for disposition of the intangible property.

Research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law may be requested by the Federal awarding agency. Upon such request, the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the Freedom of Information Act (FOIA). If the Federal awarding agency obtains the research data solely in response to a FOIA request, the 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 agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

Awards to both subrecipients and vendors involving the use or development of computer programs or applications, or the maintenance of data bases or other computer data processing programs (including the inputting of data), must include a clause stating that the awarding

agency and DOL have unlimited rights to data first produced or delivered under the agreement, and to authorize others to do the same for Federal purposes.

Property Trust Relationship. Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Recipients must record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

COMMERCIAL RECIPIENTS & SUBRECIPIENTS

Title. Property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding agency, provided such agency is a governmental entity or non-governmental organization that is not a commercial organization. Property so acquired or produced shall be considered to be acquired or produced by the awarding agency and regulations pertaining to the awarding agency's status (State and governmental subrecipients or non-governmental nonprofit subrecipients) shall apply to that property. If the awarding agency is also a commercial organization, title shall vest in the higher level, noncommercial awarding agency that made the subaward to the commercial subrecipient.

OTHER PROPERTY MANAGEMENT CONSIDERATIONS

Property/Equipment Use by Subrecipients. Subrecipients shall not fund property/equipment acquisitions under the terms of a contractual agreement unless absolutely necessary. In such cases, the subrecipient administering the funding shall take possession of the property at the end of the program or project and shall include the property in its property inventory records. The awarding agency must establish title and compensation rights to property.

Property transferred to WIA from the CETA and JTPA Programs is subject to the disposition and compensation provisions of 29 CFR Part 95 and Part 97.

General Guidance Regarding Leasing. Interest costs associated with capital leases and other lease purchase arrangements are allowable so long as they are reasonable and allocable to the grant.

The decision to rent or buy needs to be governed by considerations of economy. Considerations may differ by property type and according to market conditions. Thus, leasing with an option to purchase is generally preferable to straight leasing.

Subrecipients may not rent or lease their own personal property to the WIA program, or lease from other activities in which they have a vested interest or which has a vested interest in them.

DIVISION OF CAREER SERVICES
COMPREHENSIVE PROPERTY INVENTORY

Operator: _____ Date: _____ Date of Last Physical Inventory: _____

A complete property listing of all items with a **value of \$5,000.00 or more and a useful life of one year or longer** must be maintained. The list must include all items purchased with funds from programs administered by the Division of Career Services. Items purchased after July 1, 1992 must include all information.

Description	Serial Number	Tag Number	VENDOR Source of Property	Purchase Date	Fair Market Value of Property	% of Federal or State Funds	Federal or State Funding Stream	Specific Location of Property	Use & Condition of Property	Disposition

1. I certify that the above property inventory list contains all property having a value of \$5,000 or more where USDOL and/or the Commonwealth of Massachusetts reserves the right to take title. This list includes property purchased under the Workforce Investment Act.

Authorized Signature Typed Name and Title Date

2. I certify that no property having a value of \$5,000 or more was purchased with federal funds. Therefore, we (grantee) have no further obligation to USDOL or the Commonwealth of Massachusetts. This list includes items purchased under the Workforce Investment Act.

Authorized Signature Typed Name and Title Date