

# FEDERAL REVERSIONARY INTEREST IN REAL PROPERTY

## FAQ: Federal Reversionary Interest in Real Property (Construction Projects)

### What is Federal Interest?

Federal Interest is the Federal government's share in a property, based on the Federal funding that went towards acquiring or upgrading it. The Federal government has a Federal Interest in Equipment, Supplies, and Real Property (land and buildings). Property, equipment, and supplies are "tools" needed to help support and deliver the various health care services that OCS funds through its grant programs.

### Federal Interest in Real Property

A grantee's property may be used to foster community economic development opportunities long after a grant is closed. When the Federal Government has provided funding for a substantial improvement (property construction or major renovations), the grantee may be required to attach a lien to the property called a Notice of Federal Interest (NFI).

### Notice of Federal Interest

The NFI protects not only the Federal Government's interest in the property, but also the purpose for which the funds were originally awarded. An NFI is required for:

- ▶ New Construction Projects—result in an increase in usable square footage, regardless of total project cost.
- ▶ Major Renovation Projects—total project costs greater than \$150,000, excluding moveable equipment costs.

### Frequently Asked Questions

#### Q1: Is a Notice of Federal Interest required for Community Economic Development (CED) Program grant projects?

A1: Yes. NFI filings are required for CED projects for:

- ALL construction projects;
- Each alteration/renovation project having a total (Federal and non-Federal) allowable project cost of more than \$150,000+ (excluding moveable equipment costs).

#### Q2: Does Federal interest exist if I don't file a NFI?

A2: Regardless of whether a grantee neglects to file a NFI, the organization must be aware that the Federal Interest still exists irrespective of the filing of the NFI. For alteration/renovation projects less than \$150,000, the grantee shall maintain adequate documentation regarding protection of all Federal Interest. This will include communications with a lesser related to protecting such interest during the lease period, in accordance with the standard award terms and conditions. Such documentation should be available for subsequent review.

#### Q3: Will the government take a subordinate position to existing mortgage holders and lenders on potential debt financing for CED projects?

A3: No. HHS/OCS's NFI takes a priority position and entitles the government to priority in



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the distribution of any proceeds from the sale or disposal of property. OCS's NFI is not subordinate to pre-existing mortgages or obligations recorded against the property. Further, the NFI is not subordinate to any pre-existing loans and obligations identified by the grantee in the CED application as sources of financing for the project. Future modifications to existing mortgages and new mortgages will require HHS/OCS review and prior approval.

**Q4: The CED grant award requires that the facility owner file a NFI against a facility deed. What if the owner wants to secure additional mortgages or lease the facility to another entity?**

A4: A NFI is essentially a lien that protects HHS/OCS's financial and public interests in the real property being used to strengthen the mission of OCS. After a NFI is filed against the property, activities such as new mortgages, selling the facility, or leasing the facility to an entity that was not presented in the original grant application, requires prior approval from the OCS.

Prior approval must come in the form of a written request from the grantee to HHS, via the Office of Grants Management (OGM), signed by the authorizing official for the grant award with the following information:

1. What is the action that the owner wants to undertake (new loan, refinancing, expansion, sale, etc.)?
2. What is the grantee or owner requesting from OCS (permission to secure a new loan, transfer to another site, etc.)?
3. If applicable, details of the project financing (the combination of loans and internal funding), or proposed sale (whether there is an identified buyer, the proposed sale price).
4. Copy(s) of all HHS/OCS NFIs, associated Notice(s) of Grant Award, and/or funding information associated with the NFI. A copy of the deed, with a legal description of the property, to which the Federal Interest is attached.
5. Appraised value of the property at the time of project completion.
6. Terms of the proposed loan, i.e., interest rate, period of loan, amortization schedule.

Reviewing Federal Interest requests takes time and OCS/OGM requests patience and cooperation in the process. Providing detailed requests and supporting documentation up front will aid in expediting reviews.

**Q5: Will the value of the Federal interest change over time, especially as the useful life of the renovation/alteration expires?**

A5: Each CED alteration/renovation project having a total (Federal and non-Federal) allowable project costs of more than \$150,000 excluding moveable equipment costs, is required to file a NFI.

HHS acknowledges that the market value of supported renovations/alterations will change over time. HHS will work with grantees to recognize the changing market value of improvements and other activities made by the grantee or property owner of the facility.

**How to Record a Notice of Federal Interest (NFI)**

**General**

1. Within the United States, except Hawaii, the NFI must be filed in the county or district office in which the facility is located. Often this is the County Court Clerk, Probate Office or the Register of Deeds. In the State of Hawaii, the NFI must be filed with the State Department of Land and Natural Resources, Bureau of Conveyances.
2. Please understand that local governments may have different formatting requirements. It is important to check with the office before filing, as it may save you an extra trip.
3. The county government will provide a copy of the recorded NFI with the county stamp, date, and receipt information, or the final reference number (book and page, file, etc.).

**NFI Document**

1. The grant number must be referenced i.e., 90EE0001.
2. The description of the project should clearly describe the new construction project, or alteration and renovation. The NFI does not apply to moveable equipment (though equipment does have Federal Interest, as do alteration and renovation projects below the NFI filing threshold).
3. The legal description should be preferably the full legal description of the property in the deed. However, Township and Range, or Map, Block, and Lot number will be accepted. A physical address may be included, but does not constitute a legal description in itself.
4. The restrictive language of the template may not be modified.
5. The signatory of the NFI should own the property. This indicates the owner's consent to have a lien filed on the property.
6. The NFI must then be notarized and embossed with a notary seal.
7. The NFI must then be recorded with the county government.

## Key Terms

- **Real Property:** Land, including land improvements, structures, and appurtenances (excludes movable machinery and equipment)
- **Construction:** A project, supported through a CSBG discretionary grant, to support the initial building or large scale modernization or permanent improvement of a facility.
- **Alteration and Renovation (A&R):** The work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the CSBG grant funded project. A&R may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and large scale permanent improvements. A&R may be classified as minor or major depending on the extent of the required work, its relationship to an existing structure, and its costs.
- **Hard Cost:** Includes expenditures for construction or acquisition of real property and major alterations and renovations of real property.
- **Soft Cost:** Costs that do not result in the acquisition of an “enduring” asset. These expenditures would include: architectural design and services, permits, fees, insurance, legal costs incurred in negotiating contracts, etc.

- **Equipment:** Tangible non-expendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- **Intangible Property and Debt Instruments:** Trademarks, copyrights, patents, and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other property ownership, whether tangible or intangible.



## References

- ❖ [www.acf.hhs.gov/programs/ocs/index.html](http://www.acf.hhs.gov/programs/ocs/index.html)
- ❖ 45 Code of Federal Regulations (CFR) Part 74.32, 74.36, 74.37
- ❖ <http://www.hhs.gov/grantsnet/LawsRegs.htm>
- ❖ Grants Policy Statement (GPS)  
[http://www.hhs.gov/grantsnet/docs/HHSGPS\\_107.doc](http://www.hhs.gov/grantsnet/docs/HHSGPS_107.doc)

# Reversionary Interest

## Protecting Our Communities



*This brochure is presented by:*

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*For more information visit [www.acf.hhs.gov](http://www.acf.hhs.gov)*

*This brochure will explain how reversionary interest applies to your project while protecting the Federal government's interest in property acquired with grant funds.*

## ***What is Reversionary Interest?***

Reversionary interest refers to the Federal government's ongoing interest in property acquired or improved with Federal grant funds that is triggered when such property is no longer needed for the original authorized purpose. In short, Federal grant funds and property acquired in whole or in part with those funds revert to the Federal government whenever those funds and property can no longer be used for grant purposes. The term "property" includes real property, intangible property including debt instrument, and equipment.



### ***Real Property***

(45 Code of Federal Regulations Part 74.32)

Title to real property purchased with Federal grant funds vests in the grantee subject to the condition that such property shall be used only for the authorized purposes of the funded project. Real property constructed or renovated with HHS grant support may not be conveyed, transferred, assigned, mortgaged, leased, or in any other

manner encumbered by the grantee without the express written approval of the HHS awarding agency, in this case the ACF Office of Grants Management (OGM). Once the property is no longer needed for the originally authorized grant project, the grantee must seek disposition instructions from the OGM.

### ***Notice of Federal Interest***

(45 Code of Federal Regulations Part 74.37)

Grantees are required to record liens or other appropriate notices of record in the appropriate public records of the jurisdiction in which the property is located to indicate that real property has been acquired, constructed, or improved with Federal grant funds, and that use and disposition conditions apply to the property. The Notice of Federal Interest (NFI) must be filed when construction or major alterations and renovations begin or when an existing facility or land is acquired.

A copy of the NFI must also be provided by the grantee to the OGM.



### ***Intangible Property***

(45 Code of Federal Regulations Part 74.36)

Title to intangible property and debt instruments purchased or otherwise acquired under an award or sub-award 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 the HHS awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with provisions of §74.34 (g) and (h).

The Secretary of the Department of Health and Human Services (HHS) establishes procedures regarding the disposition of intangible assets and program income that permit such assets acquired with, and program income derived from, grant funds authorized under section 680 of the CSBG Act to become the sole property of such grantees after a period of not more than 12 years after the end of the grant period for any activity consistent with section 680(a)(2)(A) of the CSBG Act.

Intangible assets in the form of loans, equity investments and other debt instruments, and program income may be used by grantees for any eligible purpose consistent with section 680(a)(s)(A) of the CSBG Act.

Grantees proposing to use grant funds to provide loans or to acquire stocks must submit a Disposition of Asset Plan to the OGM at the time of execution of the loan or of the stock purchases. OGM requires that the following information be submitted for:

#### ■ **Stocks**

- ✓ Grantee must be seated on the Board
- ✓ Stock cost per share
- ✓ Current value
- ✓ Number of shares held
- ✓ Percentage of company ownership held

#### ■ **Loan**

- ✓ Identification of the loan recipient
- ✓ Interest rate
- ✓ Length and terms of the loan
- ✓ Payment schedule
- ✓ Defaults and recovery actions