**Federal Interest Considerations in Property and Equipment:**

**Introductory Guidance**

**Background**

Federal administrative requirements applicable to nonprofit grantees provide that the title to real and intangible property and equipment purchased (or, in the case of real property, improved) with federal funds, in whole or in part, vests in the grantee. Because of the Federal Government’s investment in the acquisition of such property and things, it retains an equitable interest in the property and/or equipment. Federal grantees, therefore, may not encumber, put to a different use, or dispose of such property/equipment without the approval of the grantor agency.

Federal interest considerations for ownership and disposition of real property and equipment

With respect to real property acquired or improved using federal funds, the federal grantee must record appropriate documents with local authorities notifying the public that the property “has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.”[[1]](#footnote-1)

If the federal grantee no longer needs the property for the original project and it desires to use it in any other federally-sponsored project or to transfer or dispose of the property, the federal grantee must seek disposition instructions from the government. If the agency permits the federal grantee to retain title to, or requires it to sell, the property, the federal grantee will compensate the Federal Government for the “federal share” of the current fair market value of the property.[[2]](#footnote-2) The federal share represents the proportion of federal grant funds to the costs of the overall grant-supported undertaking.[[3]](#footnote-3)

A federal grantee is permitted to use equipment acquired with federal financial assistance both for the purpose authorized under the program through which it was purchased and in other federally-sponsored projects without grantor agency approval.[[4]](#footnote-4) However, if the federal grantee seeks to use equipment for activities not related to any federally-supported project after it no longer needs that property for use under a federal award, it can retain title to such equipment, provided that the awarding agency allows it to do so and the federal grantee compensates the Federal Government for its share of the current fair market value of the equipment.[[5]](#footnote-5) Note that a federal grantee may retain title to equipment with a fair market value of $5,000 or less per unit without further obligation to the Federal Government.[[6]](#footnote-6)

Federal interest considerations in intangible property

As with other property, title to grant-acquired or developed intangible property (1) vests in the recipient, (2) must be used for the originally authorized purpose, and (3) cannot be encumbered without grantor agency approval.[[7]](#footnote-7) In addition, the regulations give the Federal Government an irrevocable, royalty-free, and non-exclusive right to reproduce, publish or otherwise use for federal purposes (and to authorize others to do so) copyrighted work which was “developed, or for which ownership was purchased, under an award.”[[8]](#footnote-8) Patents and inventions that PCAs-HCCNs may obtain in connection with federally-supported projects are subject to the Federal Government’s interests as outlined in Department of Commerce regulations.[[9]](#footnote-9)

Because a federal grantee may copyright any work that is subject to copyright and was developed (or for which ownership was purchased) with federal funds, it is possible for a federal grantee to sell licenses to or obtain royalties from that property without encumbering or otherwise impairing the value of the federal interest. For instance, where a PCA-HCCN has developed copyrightable material with grant funds, the PCA-HCCN may charge third-parties a fee to reproduce that material, yet, at the same time, retain intact its original ownership interest in the copyright. Not only may the PCA-HCCN enter into such transactions without running afoul of the federal property standards, but it may also treat the license fees and royalties derived from copyrights, patents, and similar intangible property as unrestricted income.[[10]](#footnote-10)

**Advice and Recommendations [[11]](#footnote-11)**

The purpose of the property and equipment standards is to provide uniform rules to govern the management and disposition of property and equipment furnished or supported by federal awards. Each PCA-HCCN should develop its own property management procedures, based on the particular facts of the PCA-HCCN, provided those procedures are consistent with the requirements set forth in 45 C.F.R. Part 75.

* [Ownership, use, and disposition of property, equipment, and supplies acquired with federal funds: Sample policy and procedure](https://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/827)

Regulations require recipients to obtain appropriate insurance for property and equipment acquired with federal funds (i.e., coverage equivalent to that provided for the PCA-HCCN’s other property/equipment).[[12]](#footnote-12) Although the Federal Government retains an interest in the property/equipment, title remains vested in the PCA-HCCN until disposition; as such, insurance coverage is not only legally required, but prudent.

The federal interest that attaches to property and equipment purchased (or, in the case of real property, improved), in whole or in part, with federal grant fund can raise interesting questions with regard to the development, acquisition and/or transfer of such property and equipment. A PCA-HCCN can avoid any federal interest in property and equipment by using non-federal funds for such activities. Further, under certain circumstances, a PCA-HCCN may acquire that interest from the Federal Government by compensating the grantor agency (typically HRSA) for the federal share of the current fair market value. Note that federal grantees in such circumstances have historically had some success in persuading the Office of Grants Management (“OGM”) to authorize the reinvestment of the federal share dollars in project-related activities.

 A PCA-HCCN may also seek to eliminate HRSA’s interest in grant-acquired property by filing a request with OGM for a “deviation” from the Part 75 administrative requirements.[[13]](#footnote-13)

Given that PCAs-HCCNs may use intangible property to generate unrestricted income in the form of royalties and license fees, there is perhaps less of an incentive for a PCA-HCCN to seek to dispose of intangibles developed or acquired with grant funds. For example, if a PCA-HCCN develops a piece of copyrightable software for providing centralized billing or disease management services, it may be that other PCAs-HCCNs would have an interest in using that same software in their operations. The original PCA-HCCN would then have a ready market to which it could sell copies of the software, and thus expand its sources of revenue.

There is a risk; however, that the Federal Government, as the holder of a right to reproduce copyrighted material developed under the grant, might simply provide the software free-of-charge to other PCAs-HCCNs, thereby avoiding what HRSA might view as a needless and duplicative expenditure of federal grant dollars. Accordingly, if a PCA-HCCN anticipates that it will want to sell materials developed with federal grant funds to other federal awardees, it should avoid the use of grant monies when developing or acquiring intangible assets.

Please note that computer software is generally copyrighted in accordance with the Federal Copyright Act under the protected category of an original “literary work,” and, as such, would be considered intangible property under the Part 75 property standards. If software is not formally approved for copyright protection, most likely it and the related software documentation will be protected to some extent under state or common law as a “trade secret.” Although the property regulations do not specifically cover trade secrets, trade secrets should be presumed to be intangible property subject to Part 75 requirements. Further, computer equipment and software can sometimes qualify as inventions, which are generally afforded patent protection under the Federal Patent Act (and, as such, are subject to the Part 75 rules for intangible property).

1. See [45 C.F.R. § 75.323](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1323). [↑](#footnote-ref-1)
2. [See 45 C.F.R. § 75.318(c)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1318). [↑](#footnote-ref-2)
3. See [45 C.F.R. § 75.2](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_12). [↑](#footnote-ref-3)
4. [See 45 C.F.R. § 75.320(c)(1),(2)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1320" ). [↑](#footnote-ref-4)
5. See [45 C.F.R. § 75.520(e)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1520). [↑](#footnote-ref-5)
6. See id. [↑](#footnote-ref-6)
7. [See 45 C.F.R. §75.322(a)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1322). [↑](#footnote-ref-7)
8. [45 C.F.R. § 75.322(b).](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1322) [↑](#footnote-ref-8)
9. See [37 C.F.R. Part 401](http://www.gpo.gov/fdsys/pkg/CFR-2010-title37-vol1/pdf/CFR-2010-title37-vol1-part401.pdf). [↑](#footnote-ref-9)
10. See [45 C.F.R. § 75.307(c)(2)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1307). [↑](#footnote-ref-10)
11. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations and do not necessarily apply to all PCA-HCCNs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-11)
12. See [45 C.F.R. § 75.317](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1317). [↑](#footnote-ref-12)
13. See [45 C.F.R. § 75.102(b)](http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1102). [↑](#footnote-ref-13)