EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Real Property
	CORRESPONDENCE SYMBOL OMAS
	DATE July 15, 2019

ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-19**

TO: DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL ADMINISTRATORS
NATIONAL FARMWORKER JOBS PROGRAM GRANTEES
STATE LABOR COMMISSIONERS
STATE UNEMPLOYMENT INSURANCE DIRECTORS
STATE WORKFORCE AGENCIES – ADMINISTRATORS
STATE WORKFORCE ADMINISTRATORS UNEMPLOYMENT INSURANCE
STATE WORKFORCE ADMINISTRATORS WORKFORCE INNOVATION AND OPPORTUNITY ACT
STATE WORKFORCE ADMINISTRATORS WAGNER-PEYSER
STATE WORKFORCE AGENCY VETERANS COORDINATORS
INDIAN AND NATIVE AMERICAN GRANTEES
WORKFORCE DEVELOPMENT BOARD LOCAL CHAIRS
WORKFORCE DEVELOPMENT BOARD STATE CHAIRS
WORKFORCE DEVELOPMENT BOARD STATE EXECUTIVE DIRECTORS
WORKFORCE DEVELOPMENT BOARD LOCAL EXECUTIVE DIRECTORS
WORKFORCE INFORMATION COUNCIL STATE LABOR MARKET DIRECTORS
YOUTHBUILD GRANTEES

FROM: MOLLY E. CONWAY /s/
Acting Assistant Secretary

SUBJECT: Real Property Under Employment and Training Administration-Funded Grants

1. **Purpose.** To provide guidance on real property issues, including using grant funds for capital expenditures and other real property costs, depreciation, maintaining insurance, handling idle facilities and idle facility capacity, retaining records, disposing of real property acquired with Employment and Training Administration (ETA) grant funds, renting real property, and using and disposing of State Workforce Agency (SWA) real property that has Federal (Department of Labor) equity or Reed Act equity.

RESCISSIONS	EXPIRATION DATE
GAL 5-94	Continuing

2. **<u>Action Requested</u>.** States and other non-Federal entities[1] receiving funds under any of the following are directed to follow this guidance and to distribute this guidance to appropriate personnel: (a) Title I of the Workforce Innovation and Opportunity Act (WIOA) (P.L. 113-128); (b) the Wagner-Peyser (W-P) Act (29 U.S.C. 49, et seq., as amended by WIOA Title III); and (c) Title III of the Social Security Act (SSA) (42 U.S.C. 501 et seq.) (unemployment insurance (UI) program).

3. **<u>Background</u>.** This Training and Employment Guidance Letter (TEGL) provides guidance about the real property[2] requirements that apply to non-Federal entities receiving ETA grants under WIOA Title I, the W-P Act, and SSA Title III. It covers a variety of issues that affect how a grantee accounts for costs incurred in using property to carry out the U.S. Department of Labor (DOL or Department), ETA grants. Specific rules apply depending on whether the grantee will use its own facility or rent a facility to carry out a grant. Other requirements, including obtaining insurance coverage, may also apply. The Uniform Guidance, applicable to DOL grants beginning on December 26, 2014 (unless the grantee implemented earlier), changed some of these requirements. WIOA, which superseded the Workforce Investment Act of 1998 (P.L. 105-220) (WIA), and its implementing regulations at 20 CFR Part 683, also imposes real property requirements on grantees.

   This TEGL also addresses real property issues involving Federal equity, which is specific to SWAs. For many years, States purchased or paid for the construction and renovation of buildings that would house the State Employment Security Agency (SESA),[3] which carried out the UI program under Title III of the SSA, and the W-P Act Employment Service (ES) program pursuant to 29 U.S.C. 49 et seq. The Department permitted the SESAs to apply grant funds awarded for the administration of the UI and W-P grants towards the amortization, or payment over time, of the costs of the SESAs' space in the newly acquired or renovated buildings.[4] DOL would acquire equity in the building (or land, if applicable) proportionate to its share in funding the cost of the SESA space with the use of UI and W-P

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[1] The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Parts 200 and 2900 (Uniform Guidance) uses the term "non-Federal entity" to cover a wide range of grantees, and defines the term as "a state, local government, Indian tribe, institution of higher education (IHE), or non-profit organization that carries out a Federal award as a recipient or subrecipient" (2 CFR 200.69). DOL received Office of Management and Budget (OMB) approval for 22 exceptions to the Uniform Guidance. DOL's exception expands the definition of "non-Federal entity" to include the following: for-profit entities, foreign public entities, foreign organizations or nonprofit organizations that carry out a Federal award as a recipient or subrecipient (2 CFR 2900.2). A "recipient" is defined in the Uniform Guidance as "a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program" (2 CFR 200.86). A "subrecipient" is defined as a "non-Federal entity that receives a subaward from a 'pass-through entity' to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program" (2 CFR 200.93). "Pass-through entity" is defined as "a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program" (2 CFR 200.74).

[2] The Uniform Guidance defines "real property" as "land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment" (2 CFR 200.85).

[3] SWAs were formerly referred to as SESAs.

[4] In some cases, the SESAs purchased land, along with the buildings, and ETA grant funds were used to amortize those costs as well.

grant funds. This is referred to as "Federal equity" or "DOL equity" in this TEGL. Title to the real property remained with the State.[5]

The authority to enter into new amortization arrangements ended on February 15, 2007, and DOL's equity was transferred to the States pursuant to the Revised Continuing Appropriations Resolution 2007 (Public Law 110-5), which amended WIA section 193 (29 U.S.C. 2943). The WIA amendment also required that the portion of proceeds attributable to the Federal equity be used by the States to carry out activities authorized under WIA, the W-P Act, or Title III of the SSA. WIOA section 192(b) (29 U.S.C. 3252(b)) and 20 CFR 683.240(a)(3)) continue the WIA prohibition on States using funds awarded under WIOA, Title III of the SSA, or the W-P Act to amortize the costs of real property that was purchased by any State on or after February 15, 2007. Moreover, as discussed in this TEGL, WIOA section 192(a) (29 U.S.C. 3252(a)) provides conditions which apply to Federal equity transferred to the States. Specifically, the portion of any real property that is attributable to the Federal equity transferred must be used to carry out activities authorized under WIOA, Title III of the SSA, or the W-P Act.

Another type of equity discussed in this TEGL is "Reed Act equity." Reed Act funds are distributions of excess funds in the Unemployment Trust Fund (UTF) to the accounts of the States within the UTF, as authorized under SSA section 903 (42 U.S.C. 1103). Although States occasionally acquired real property by issuing state bonds or by using other types of funds, such as penalty and interest funds obtained from employers (P & I funds)[6] or State general funds, the most common arrangement was for States to purchase real property with Reed Act funds. State legislatures are permitted to appropriate Reed Act funds for "payment of expenses incurred [by the State] for the administration of its unemployment compensation law and public employment offices," which includes the costs of acquiring office buildings (SSA section 903(c)(2); 42 U.S.C. 1103(c)(2)). Specific rules, described in this TEGL, apply to Reed Act equity, including that when a property with Reed Act equity is sold, the sales proceeds attributable to the Reed Act equity in the property must be returned to the State's account in the UTF.

DOL has previously issued guidance on SESA real property equity issues, including Unemployment Insurance Program Letter (UIPL) No. 39-97 *The Reed Act Provisions of Title IX of the Social Security Act* (September 12, 1997); General Administration Letter (GAL) No. 05-94, *Acquisition, Use, and Disposition of SESA Real Property* (January 24, 1994) TEGL No. 7-04, *Issues Related to Real Property Used for ETA Program Purposes* (October 20, 2004), and TEGL No. 3-07, *Transfer of Federal Equity in State Real Property to the States* (August 1, 2007). To the extent that previous guidance conflicts with this TEGL, the guidance provided in this TEGL applies.[7]

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[5] The SESAs agreed to apply 29 CFR Part 97 to real property acquired prior to the effective date of Part 97, through assurances in the Fiscal Year (FY) 1989 Employment Service Reimbursable Grant agreement and the FYs 1990 and FY 1991 Unemployment Insurance Program and Budget Plans. The property disposition requirements in 29 CFR 97.31 are similar to those in the Uniform Guidance.

[6] The State acquires penalty and interest funds from employers who do not timely pay UI taxes.

[7] Note that GAL 05-94 has been rescinded.

4. **<u>Using Grant Funds for Capital Expenditures</u>.** Capital expenditures are expenditures to acquire capital assets, or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (2 CFR 200.13). The Uniform Guidance defines capital assets as "tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP);"[8] included are: land and buildings (facilities), whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases (2 CFR 200.12(a)).[9] Capital assets also include "additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life" (2 CFR 200.12(b)). Ordinary repairs and maintenance are not capital expenditures (2 CFR 200.12(b); 2 CFR 200.452).

   Procurement Standards: When non-Federal entities procure real property using ETA grant funds, they must follow the procurement standards in the Uniform Guidance. See 2 CFR 200.317 to 200.326 and Appendix II. For example, non-Federal entities must use their own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law (2 CFR 200.318(a)). When procuring real property under an ETA grant, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds (2 CFR 200.317).[10]

   Prior Approval Requirements: Prior approval is required before ETA grant funds can be used for capital expenditures. The WIOA regulations provide that "WIOA Title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings, except with the prior written approval of the Secretary" (20 CFR 683.235).[11] Similarly, the Uniform Guidance provides that capital expenditures for buildings and land, or for improvements to land or buildings which materially increase their value or useful life are unallowable as direct charges, except with prior written approval of the Federal awarding agency or pass-through entity[12] (2 CFR 200.439(b)(1) and (3)).

[8] GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB). 2 CFR 200.49.

[9] See section 10 on using ETA grant funds for particular types of leases.

[10] See also 2 CFR 200.404 on "reasonable costs."

[11] This authority has been delegated to the ETA Grant Officer. See Secretary's Order 06-2010 (Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Employment and Training, October 20, 2010); Secretary's Order 03-2018 (Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Administration and Management, May 14, 2018), section 7.A.; (Department of Labor Manual Series 2-800 (Grant and Procurement Management), section 814.

[12] Defined in footnote 1.

Any building-related expense that is outlined in the Uniform Guidance that requires prior approval must go through the written prior approval process. The Uniform Guidance provides specific rules for requesting prior approval. The approval request should include the timeframe or scope of the agreement (i.e., a proposal about which funds will be used and what they will be used for), along with information and documents that ETA requested from the non-Federal entity during discussions about the proposal that preceded submission of the proposal. The information and documents must be submitted to the ETA grant officer at least 30 days before the requested action is to occur. See 2 CFR 200.407 and 2900.16. Unless otherwise noted in the grant agreement, the grant officer is the designated official with the authority to provide prior written approval (prior approval). Inclusion of items in a Statement of Work or budget narrative for which funds are awarded does not constitute prior approval (2 CFR 2900.16).

If the non-Federal entity obtains prior approval as described above, the capital expenditure will be allowed as a direct charge. It will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with ETA (2 CFR 200.439(b)(4)). The charges will be allocated among the applicable entities based on the proportional benefit. Capital expenditures are unallowable as indirect costs (2 CFR 200.439(b)(7)).

Notwithstanding the absence of prior approval, where federal workforce grant funds were used for the acquisition of real property or capital improvement(s), ETA has an equity interest in the real property proportionate to the amount of federal funds used.

Special Arrangement and Alteration Costs: Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alteration costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the ETA grant officer (for direct DOL grantees) or the pass-through entity (for subrecipients) (2 CFR 200.462(a)).

Rearrangement and Reconversion Costs: Costs incurred for ordinary and normal rearrangement and alterations of facilities are allowable as indirect costs (2 CFR 200.462(a)). Prior approval from the ETA grant officer, as described in this section, is needed if direct charges will be incurred. Thus, whether prior approval is needed to use grant funds to make improvements to affiliated one-stop centers as required by 20 CFR 678.310(d), or to make repairs to meet local or State facility codes or to make alterations so that the premises are suitable for carrying out the grant, depends on whether the rearrangement or reconversion is an ordinary and normal expense that can be charged indirectly or a capital expenditure that must be charged as a direct cost.

Costs incurred in the restoration or rehabilitation of the non-Federal entity’s facilities to approximately the same condition existing immediately prior to commencement of the Federal award, less costs related to normal wear and tear, are allowable (2 CFR 200.462(b)).

Again, capital improvements may not be made with WIOA Title I funds without prior approval. Any expenditure must be reasonable and cannot significantly deviate from the non-Federal entity's established practice and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's costs (2 CFR 200.404(e)).

5. **Specific Programs Under WIOA.** The TEGL provides general guidance on real property issues that might arise in any ETA grant program. Two particular WIOA programs—YouthBuild and the National Farmworker Jobs Program (NFJP)—necessarily require that grant funds be used for capital expenditures.[13] The YouthBuild program is designed to provide education and occupational skill development to eligible participants in construction and other industries. The NFJP provides career, training, housing assistance, and related assistance services to migrant and seasonal farmworkers (MSFW). Congress appropriates funds for NFJP Career Services and Training grants and for NFJP Housing grants, which provide permanent and temporary housing. For real property issues that arise in these programs, more information is provided in the specific guidance related to these programs, and in the Funding Opportunity Announcements in effect for the applicable Program Year.

6. **Using Grant Funds for Other Real Property Costs.** Some common examples of other real property costs include, but are not limited to, the following:

   Maintenance and Repair Costs: The Uniform Guidance provides that costs for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition are allowable. Maintenance and repair costs are allowable only to the extent not paid through rental or other agreements (2 CFR 200.452).

   Security Costs: Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to: wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. However, capital expenditures for security purposes are subject to prior approval requirements (2 CFR 200.457).

   Costs for non-Federal Entity Owned Buildings: If the non-Federal entity owns the building where the grant is being carried out, costs such as depreciation costs (if applicable), maintenance, taxes, and insurance, may be charged to the grant.

   Depending on the non-Federal entity's cost allocation policies, these charges could be direct costs, or indirect costs, or both.

7. **Depreciation.** The Uniform Guidance provides that depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use (2 CFR 200.436(a)). The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non–Federal entity's activities, and properly allocated to Federal

[13] These are not the only programs for which grant funds may be used for capital expenditures.

awards.[14] Such compensation must be made by computing depreciation and drawing down the computed amount from the grant. Importantly:

- Depreciation is allowed only for the portion of a capital expenditure that was paid for with non-Federal funds. Specifically, when a non-Federal entity expends non-Federal funds on a capital expenditure in order to carry out an ETA grant, the entity may charge ETA depreciation in proportion to the use by ETA grantees. For example, if the cost of a building was paid in whole or in part with ETA grant funds and the grantee remodels the HVAC system with non-Federal funds, the grantee could depreciate the costs of the HVAC system and charge the building occupants, including ETA grantees, proportionately to their square footage of occupancy in the building.

- Depreciation costs may not be charged for any period during which the real property was not used for the applicable ETA grant.

- A non-Federal entity cannot charge the grant depreciation if it is charging the grant the direct costs of a capital asset.
- No depreciation may be allowed on fully depreciated assets or on any assets that have outlived their depreciable lives.
- Non-Federal entities cannot charge both depreciation and rent for the same facility to the grant.

- A SWA cannot charge depreciation for the portion of the facility that was funded or amortized in whole or in part with UI or W-P grant funds.

- Land cannot be depreciated because it is assumed to have an unlimited useful life. Capital improvements to land, however, such as paved parking areas, fences, sidewalks, and the like, can be depreciated (2 CFR 200.306(h)(2); Appendix III, B.2.b.(4); Appendix IV, B.3.b.(1) and B.3.c.(1)(d)).

How Depreciation is Computed:

- **Acquisition Cost**: As provided by 2 CFR 200.436(c), the computation of depreciation must be based on the acquisition cost of the assets involved. Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use (2 CFR 200.2). Acquisition costs must exclude:

    - The costs of land;
    - Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, regardless of where the title was originally vested or where it is presently located;
    - Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity where law or agreement prohibits recovery;

[14] The allocation for depreciation must be made in accordance with Appendices IV through VIII of the Uniform Guidance (2 CFR 200.436(b)).

- Any asset acquired solely for the performance of a non-Federal award; and
- Any portion of the asset that has already been depreciated.

Further, when determining the acquisition costs that will be used in the depreciation calculation, the SWA can consider only the total non-depreciated and non-Federal proportionate share of the acquisition costs of the real property and any subsequent capital improvements paid with non-Federal funds.

Acquisition costs for donated assets – For assets donated to the non-Federal entity by a third party, the acquisition cost is the fair market value at the time of the donation. These assets may be depreciated or claimed as meeting a matching requirement, but not both (2 CFR 200.436(c)).[15]

- **Useful life of Asset**: When computing depreciation charges, the non-Federal entity must determine the period of useful service or useful life established in each case for usable capital assets, and take into consideration such factors as:

  - The type and date of construction;
  - Historical data;
  - Renewal and replacement policies followed for the individual items or classes of assets involved (2 CFR 200.436(d)(1)); and
  - An appraisal of useful life of the asset

- **Straight-Line Method of Depreciation**: The depreciation method used to charge the cost of an asset or group of assets to accounting periods must reflect the pattern of consumption of the asset during its useful life (2 CFR 200.436(d)(2)). Thus, the straight-line method is presumed to be the appropriate method of depreciation unless there is clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of the asset's useful life.

- **Changing Methods of Depreciation**: Depreciation methods once used may not be changed unless approved in advance by the cognizant agency responsible for reviewing, negotiating, and approving cost-allocation plans or indirect cost rate proposals.[16] The depreciation methods used to calculate the depreciation amounts for indirect Facilities and Administration (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements (2 CFR 200.436(d)(2)).

- **Depreciation of Single Asset or Multiple Components of the Asset**: The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. Generally, real property facilities are

[15] Matching (or cost sharing) means the portion of project costs not paid by Federal funds (unless authorized by Federal statute) (2 CFR 200.29). For more information about cost sharing or matching, see 2 CFR 200.306.

[16] The cognizant agency for indirect costs is defined at 2 CFR 200.19. The cognizant agency is not always the Department of Labor.

depreciated over a useful life of 40 to 50 years. However, a building may also be divided into multiple components, allowing non-Federal entities to use separate depreciation schedules for various parts or systems within a building (2 CFR 200.436(d)(3)). Specifically, the building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system, heating and air-conditioning system, etc.), and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms, glassware/washers, etc.) (2 CFR 200.436(d)(3)).[17] The Internal Revenue Service (IRS) publishes a schedule on the useful life of various equipment and real property. See IRS Publication 946. ETA will accept the time periods provided by this schedule.

When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect cost (F&A) purposes[18] and financial statements purposes (2 CFR 200.436(d)(3)).

- **Depreciation Replacing Use Allowance Method**: The Use Allowance method[19] of charging grants for property use is no longer allowed. Thus, where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset, including imputed depreciation applicable to periods prior to the conversion from the use allowance method, as well as depreciation after the conversion, may not exceed the total acquisition cost of the asset (2 CFR 200.436(d)(5)).

- **Gains and losses on disposition of depreciable assets:** The Uniform Guidance provides that gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount

[17]The Uniform Guidance permits a cognizant agency to authorize more than the three subgroupings in exceptional cases (2 CFR 200. 436(d)(3)).

[18] Indirect (Facilities &Administrative) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived (2 CFR 200.56).

[19] Previously, grantees were permitted to determine building costs by the "use allowance" method. OMB Circular A-87 (2004), Attachment B, Item 11g, provided that "[a] reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated." Use allowance for buildings and improvements (including land improvements) was computed a rate not exceeding two percent of the acquisition costs. Id. at Item 11f.

of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property (2 CFR 200.443(a)). More details on this topic can be found at 2 CFR 200.443(b) through (d).

- **Records**: The Uniform Guidance also provides specific recordkeeping directions with respect to depreciation. Specifically, charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained (2 CFR 200.436(e)). The non-Federal entity's budget must follow the depreciation rules, and the amounts must reconcile to the entity's audited and non-audited financial statements and general ledgers.

8. Other Real Property Requirements.

Insurance: Non-Federal entities are also required to maintain, at a minimum, the equivalent insurance coverage for real property acquired or improved with Federal funds and as provided to property owned by the non-Federal entity (2 CFR 200.310). Typically, non-Federal entities operating ETA programs do not maintain or operate their ETA grants in Federally owned properties. Federally owned properties are usually managed by the Federal agency that acquired the property or by the General Services Administration. As such, Federally owned property need not be insured unless required by the terms and conditions of the Federal award.

Idle Facilities and Idle Capacity: Sometimes space becomes unnecessary for various reasons, such as consolidation of space, program changes, or reductions in staffing. Costs for idle facilities and capacity may be disallowed, depending on the circumstances. The Uniform Guidance provides rules on the allowability of costs associated with idle facilities and idle capacity in partially used facilities (2 CFR 200.446).[20]

The costs of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs (e.g., insurance, interest, and depreciation). These costs could include the costs of telecommunications or information technology systems capacity that is built to withstand major fluctuations in load (e.g., consolidated data centers) (2 CFR 200.446(a)(4)).

[20] For purposes of this description: (1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non–Federal entity; (2) "Idle facilities" means completely unused facilities that are excess to the non–Federal entity's current needs; (3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: (i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and; (ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved (2 CFR 200.446(a)).

The Uniform Guidance explains that the costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices.

Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities (2 CFR 200.446(c)). The Uniform Guidance specifies that the costs of idle facilities are unallowable except to the extent that:

- They are necessary to meet workload requirements, which may fluctuate, and are allocated appropriately to all benefitting programs; or
- Although not necessary to meet fluctuations in workload, they were necessary when acquired, but the facility is now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. In such circumstances, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities (2 CFR 200.446(b)(1) and (2)).

ETA recommends that non-Federal entities take steps to reduce the costs to the Federal grant programs by finding other entities to rent the idle facility or capacity. Proper planning will allow non-Federal entities to rent out unoccupied space in a timely manner. If the facility is no longer needed, the grantee shall request disposition instructions. See sections 9 and 11.

Property Record Requirements – There are property record reporting and retention requirements for non-Federal entities that occupy buildings where ETA has an interest.[21]

Property Reports: Non-Federal entities must follow all Departmental reporting requirements. Additionally, the Department is developing a property certification reporting system which will be described in separate guidance.

Retention Requirements: Records for real property acquired with Federal funds must be retained by the non-Federal entity for three years after final disposition (2 CFR 200.333(c)). This includes records that contain information about properties acquired with ETA grant funds or which contain Federal equity or in which ETA has an interest, as well as information about depreciation, as described in section 7. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be

[21] A "Federal interest" in the context of acquisition or improvement of real property under a Federal award, means the dollar amount that is the product of the: (a) Federal share of total project costs; and (b) current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs (2 CFR 200.41).

retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken (2 CFR 200.333(a)).

Access to Records: ETA, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. 2 CFR 200.336(a). The rights of access are not limited to the required retention period but last as long as the records are retained (2 CFR 200.336(c)).[22]

Closeout: The non–Federal entity must account for any real property acquired with Federal funds or received from the Federal government in accordance with 200.310 (Insurance coverage) through 200.316 (Property trust relationship) and 200.329 (Reporting on real property) (2 CFR 200.343(f)).

Additional Requirements Particular to SWA Buildings: Additional property record requirements particular to SWA buildings with Federal or Reed Act equity are discussed in section 11.

9. <u>Disposition of Property Acquired with ETA Grant Funds</u>. Real property must 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 (2 CFR 200.311(b)).

The Uniform Guidance provides directions for disposing of real property when it is no longer needed for the originally authorized purpose (2 CFR 200.311(c)).[23] The non-Federal entity must obtain disposition instructions from ETA or the pass-through entity, and the instructions must provide for one of the following alternatives:

1. **Retain title after compensating DOL, or acquire replacement property -** The amount paid to DOL (or the equity transferred to the states under WIOA section 192) will be computed by applying DOL'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 real property acquired or improved with DOL grant funds 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. If there is DOL equity in the property, the dollar amount of the equity must be transferred to the

[22] The Uniform Guidance provides an exception for "extraordinary and rare circumstances" where the access requirement would include review of the true name of crime victims; however, routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information (2 CFR 200.336(b)).

[23] This is further described with respect to SWAs containing Federal or Reed Act equity in section 11.

replacement property. The dollar amount will be computed by applying DOL's percentage of participation in the cost of the original purchase (and costs of any improvements) to the net proceeds.

2. **Sell the property and compensate DOL** – The amount due to DOL (or the equity transferred to states WIOA section 192) will be calculated by applying DOL'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 DOL or to a third party designated/approved by DOL** – 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. This option is not available with respect to SWA properties containing Federal equity or Reed Act equity. See section 11 of this TEGL. Please contact ETA for guidance before taking the action described in this paragraph.

SWA Properties with Federal Equity: A more detailed description of the disposition calculations is provided in section 11.

Appraisals Required: ETA requires the non-Federal entity to obtain two or more independent appraisals of the property, regardless of the disposition option requested by the non-Federal entity or chosen by ETA. ETA may require approval of the appraiser selected by the non-Federal entity and may also obtain an appraisal of the property. The applicable Regional Office will provide the non-Federal entity instructions on obtaining appraisals.

Appraisal costs incurred by the non-Federal entity in connection with a disposition of property under TEGL sections 9 or 11 may be charged as allowable costs to the WIOA, UI, or W-P grants from the year in which the sale occurs (if SWA property with Federal equity, UI or W-P grants only) or may be paid from the proceeds generated by the DOL-approved transaction.

10. **Renting Real Property.** The costs for renting real property are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Depending on the non-Federal entity's cost allocation policies, rental charges could be direct costs, or indirect costs, or both. Rental arrangements should be reviewed periodically to determine if the circumstances have changed and other options are available (2 CFR 200.465(a)). ETA recommends that an appropriate analysis be done to determine whether renting is the most economical approach. The non-Federal entity

must also consider the Uniform Guidance procurement standards when seeking rental space, including the conflict-of-interest provisions at 2 CFR 200.318 and 200.319. See section 4.

A non-Federal entity that does not own the building in which it is performing the grant may not incur capital expenditures for the building with ETA grant funds unless it obtains prior approval from the ETA grant officer.

Types of Lease Agreements: Whether a particular type of rental cost is allowable also depends on the type of lease and the specific facts at issue.

- **Operating Lease:** The most common type of lease is an operating lease. This is an agreement that results in the periodic payment of rent for temporary use of real property owned by an outside independent third party. Monthly rental payments are allowable and must be allocated among the occupant programs in proportion to their space occupancy.

- **Sale and Lease-Back Arrangements**: This occurs when an entity sells its real property and leases it back from the buyer. The Uniform Guidance provides that rental costs made under sale and lease-back agreements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation (if applicable), maintenance, taxes and insurance (2 CFR 200.465(b)).

- **Less-Than-Arms-Length Lease:** This agreement is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Rental costs are allowable only up to the amount that would be allowed if the non-Federal entity owned the property and would include expenses such as depreciation (if applicable), maintenance, taxes and insurance (2 CFR 200.465(c)). Examples include but are not limited to: leases between divisions of the non-Federal entity; the non-Federal entity under common control through common officers, directors, or members; and the non-Federal entity and a director, trustee, officer, or key employee or an immediate family member (as defined in 2 CFR 200.465(c)(4)), either directly or through corporations, trusts, or similar arrangements in which they have a controlling interest (2 CFR 200.465(c)). This would also include a leasing arrangement between the non-Federal entity and the department, division, or unit within the non-Federal entity that is managing the ETA grant award. Rental costs are limited to expenses such as depreciation (if applicable), maintenance, taxes, and insurance (2 CFR 200.465(c)).

    - **Capital Lease**: One specific type of less-than-arms-length lease is a capital lease. The provisions of GAAP must be used to determine whether a lease is a capital lease (2 CFR 200.465(c)(5)), although generally, it is a lease where ownership of the property transfers to the lessee by the end of the lease term or when the lessee exercise an option to purchase the leased property at a bargain price. Rental costs under these leases are allowable only up to the amount that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed and would include expenses such as depreciation (if applicable), maintenance, taxes, and insurance (2 CFR 200.465(c)(5)). Interest costs related to capital leases are allowable to the extent they meet the criteria in 2 CFR 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property. A non-Federal entity may not enter into a capital lease without prior approval from the ETA grant officer.

Renting property owned by affiliated individuals/entities: The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, including commercial or residential real estate, for purposes such as the home office workstation is unallowable (2 CFR 200.465(c)(6)).

Termination: Non-Federal entities may need to terminate a lease due to funding issues or other programmatic issues. When the non-Federal entity negotiates a lease, it should include a termination clause to cover unforeseen circumstances and ensure that the termination payment is reasonable as long as the lessee provides adequate notice. In general, leases should not be unduly lengthy.

If the ETA grant is terminated, rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such a lease, if:

- The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and
- The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease (2 CFR 200.471(d)).

Termination costs that are deemed unreasonable or excessive are unallowable (2 CFR 200.404). For instance, if the grantee enters into a five-year lease with a landlord but the period of performance of its ETA grant award is only four years, the costs of that additional one year would be considered an excessive or unallowable cost to the grant. It would be in the best interest of the grantee to negotiate terms that align with period performance of a grant or offer option years that would not require a financial commitment unless agreed upon by both parties.

11. <u>SWA Property With Reed Act Equity or Federal Equity</u>. There are special rules that apply to SWA property that has Reed Act equity or Federal equity. This section explains various requirements with respect to occupying a facility with equity and for disposing of the property.

Occupancy Requirements in SWA buildings with Reed Act Equity: Buildings with Reed Act equity, including American Job Center (AJC) buildings, can also be used for one-stop service delivery as long as the proportionate share of the Reed Act equity is less than or equal to the proportionate share of occupancy by the combined UI and W-P programs in such property (20 CFR 683.240(b)). For example, if a property used as a one-stop facility has 20 percent Reed Act equity, it is permissible to have 30 percent UI and W-P program occupancy, because the amount of Reed Act equity is less than the proportionate share of UI and W-P program occupancy. The other 70 percent of the building can be occupied by other one-stop partner[24] programs.[25] Conversely, if a property used as a one-stop facility has 20 percent Reed Act equity, but UI and W-P program occupancy totals only 15 percent, the SWA would be required to increase UI or W-P program space usage to at least 20 percent. On the other hand, if a property was fully amortized with UI or WP funds or if Reed Act funds were not used to acquire the property, there are no Reed Act occupancy limitations.

Use of Property with Federal Equity: WIOA provides that the Federal equity acquired in real property through UI or W-P grants to States is transferred to the States and must be used to carry out activities authorized under WIOA, SSA Title III, or the W-P Act (WIOA section 192(a) (29 U.S.C. 3252(a) and 20 CFR 683.240(a)(1)). If the property was purchased with Job Training Partnership Act (JTPA) (Pub. L. 97-300) or WIA funds or if the property was transferred to WIA, it is now transferred to the WIOA Title I programs and must be used for WIOA purposes (20 CFR 683.240(c)). However, this does not mean space can be occupied "free of charge." As outlined in TEGL 17-16 ("Infrastructure Funding of the One-Stop Delivery System," January 18, 2017), all one-stop partners must contribute funding to cover operating costs, including infrastructure costs, based on their proportionate use and relative benefit received.

New Amortization Arrangements Prohibited: As described in section 3, States may not use funds awarded under WIA, WIOA, SSA Title III, or the W-P Act to amortize the costs of real property that was purchased by the State on or after February 15, 2007.

Requirements When Capital Improvements are Made to SWA Buildings: If capital improvements are made with respect to a SWA building that has Federal equity, the State may depreciate the unamortized costs, with prior approval of the ETA grant officer. See

[24] "One-stop partner" means an entity described in section 121(b) of WIOA (29 U.S.C. 3151(b) and 20 CFR 678.400) that is participating in the operation of a one-stop delivery system (20 CFR 651.10). "One-stop delivery system" means a one-stop delivery system described in section 121(e) of WIOA (29 U.S.C. 3151(e) and 20 CFR 678.300).

[25] As outlined in TEGL No. 16-16 ("One-Stop Operations Guidance for the American Job Center Network," January 18, 2017), there are also co-location requirements with respect to W-P ES programs. Under WIOA, W-P ES programs must be co-located in comprehensive and/or affiliate American Job Centers. If W-P ES is provided at an affiliated American Job Center, the affiliate American Job Center must include at least one or more other partners with a physical presence of combined staff more than 50 percent of the time the center is open; the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs cannot be considered the other partner. If W-P ES and any of these three programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open (20 CFR 678.315(b), 34 CFR 361.315(b), 34 CFR 463.315(b)).

section 7 for depreciation rules. Amortization of the capital improvement costs with WIOA, SSA Title III funds, or W-P Act funds is not allowed. Guidance on the applicable recordkeeping requirements will be issued by the Department.

Rental Issue:

SWA as a Lessor: Rental income received from leasing SWA space with Federal equity to other entities is treated as a reduction in current facility costs. Rental income received must be allocated among the Federal programs in proportion to the equity they hold in the facility. Any rental revenue in excess of total facility costs is treated as program income. SWAs are required to use the addition method when accounting for program income and expend the funds in accordance with 2 CFR 200.307. The percentage of rental income that is attributable to Reed Act equity must be immediately deposited in the State's account in the UTF and may not be credited as Reed Act funds.

Property Record Requirements: States are required to maintain records on equity for three years after final disposition of the property, including on equity obtained or expended, equity transferred to a replacement building, capital improvements made by the State that impacted equity, and whether DOL reimbursed the State for these costs by depreciation or directly, and any other transaction that affects equity. If the State has replaced any property that had Federal or Reed Act equity, the State's property records must show the amount of equity that was transferred or replaced and how it contributed to the cost of the replacement property and what the resulting equity is in the replacement property. When any changes to equity occur, the State must notify ETA, and provide documentation regarding the change. States must also follow the property record requirements described in section 8.

Disposition of Real Property: SWAs must request disposition instructions from the ETA grant officer when:

1. Real property containing Federal equity transferred pursuant to WIOA section 192(a) (29 U.S.C. 3252(a)) is no longer needed to carry out activities authorized under WIOA, SSA Title III, or the W-P Act (20 CFR 683.240(a)(2));
2. Real property containing Reed Act equity is no longer needed for UI or W-P Act program purposes (20 CFR 683.240(b)); or
3. Real property that was purchased with JTPA or WIA funds that was transferred to the WIOA Title I programs is no longer needed for WIOA activities. A subrecipient must ask the SWA for disposition instructions, and the SWA must notify ETA about the disposition (20 CFR 683.240(c)).

The requirements of 2 CFR 200.311(c), outlined in section 9, apply. Specifically, the State may request either to retain the property for other purposes after compensating DOL[26] or to sell the property after compensating DOL. A disposition while retaining the property for

[26] "Compensating DOL" for purposes of this section means using the funds for the applicable program requirements as discussed in this section.

other purposes means that the WIOA, UI, and W-P activities will entirely vacate the property and the State retains the property for other activities.

As part of the disposition process, ETA will provide the SWA with information that it has about the current amount of Federal equity in the facility. It is the State's responsibility to have retained information described in the property records requirements above and in this section.

The State must have the property appraised to assess its current fair market value for any of the disposition options.[27] If the property is retained for other purposes, the cash equivalent of the fair market value attributable to the portion of the property amortized using UI and W-P grant funds (and costs of any improvements) must be used solely to carry out activities authorized under WIOA, SSA Title III, or the W-P Act. Likewise, if the property is sold, the sales proceeds (and any interest) attributable to that portion of the property amortized using UI and W-P grant funds (and costs of any improvements) must be used solely to carry out activities authorized under WIOA, SSA Title III, or the W-P Act. Similarly, if the State proposes to acquire replacement property, as described in 2 CFR 200.311(c)(1), and the replacement property is worth less than the property being replaced, the excess cash proceeds must be used for activities authorized under WIOA, SSA Title III, or the W-P Act. WIOA section 192 does not require that the W-P or UI programs' use of the proceeds for those programs be proportional to the respective share of each program's equity, so the proportional use for each of the programs is at the SWA's discretion. Pursuant to 20 CFR 683.240(c), if the disposition is of real property purchased with JTPA or WIA funds that were transferred to the WIOA Title I programs, the proceeds attributable to the Federal equity must be used to carry out activities under WIOA. [28]

If the property is retained for other purposes, Federal equity must be calculated by applying the percentage of DOL's participation in the cost of the original purchase through amortization with UI and W-P grant funds (and costs of any improvements) to the fair market value of the property. If the property is sold, the combined UI and W-P portion must be calculated by applying the percentage of participation in the cost of the original purchase (and costs of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. When the State 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.

[27] The appraisal requirements described in section 9 apply. Depending on the specifics of the State's proposed disposition, the Department may require the State to provide other information.

[28] At the time that many SESA buildings were acquired or constructed, SESAs typically entered into agreements, pursuant to 20 CFR 602.16 (1961) and Part IV (sections 2520-2529) of the DOL Employment Security Manual, in which DOL approved the application of funds granted as rentals to amortize (pay) the costs of purchase or construction of the premises. Once the purchase price of the SESA property was fully met, the SESA was allowed to remain on the premises rent-free. Grant funds would be made available for only the SESA's costs of operation and maintenance of that space. Any SWA property that is still operating under an amortization-rent free agreement may continue this arrangement until the space will no longer be used for UI or W-P purposes. In that case, the disposition instructions provided in this guidance apply. As noted previously, States may no longer enter into new amortization agreements.

The cash equivalent of the fair market value attributable to Reed Act equity in the property (if the property is retained for other purposes) or the sales proceeds attributable to the Reed Act equity in the property (if the property is sold) must be calculated by applying the percentage of participation by Reed Act funds to the fair market value of the property, after subtracting the percentage of Reed Act equity amortized with UI or W-P grant funds (and costs of any improvements). The cash equivalent of the fair market value attributable to the remaining Reed Act equity (if the property is retained for other purposes) or the sales proceeds attributable to the Reed Act equity in the property (if the property is sold) must be returned to the State's account in the UTF (20 CFR 683.240(b)). The amount deposited in the State's account in the UTF will be credited as Reed Act funds only up to the amount of the Reed Act funds that were appropriated by the State for acquisition and/or improvement of the real property, because only amounts transferred to the State's account under SSA section 903 have Reed Act status. These amounts must be deposited into the particular Reed Act account (in the State's account in the UTF) from which they originated. The amount credited as Reed Act funds may be used only for authorized Reed Act purposes consistent with Reed Act requirements. Any excess proceeds (or profit) that is not used for replacement property as discussed below must immediately be deposited into the State's account in the UTF and may only be used to pay UI benefits or other expenditures consistent with the withdrawal standard at SSA section 303(a)(5)(42 U.S.C. 503(a)(5)) and Federal Unemployment Tax Act (FUTA) section 3304(a)(4)(26 U.S.C. 3304(a)(4)). As such, the funds will no longer be available for real property acquisition or administration.

In a replacement transaction involving a property with Reed Act equity, proceeds from the disposed property (including profit) may be used as an offset to the cost of the replacement property. In a replacement transaction, it is not necessary to make another appropriation of Reed Act funds to obtain the replacement property, provided that the use of such funds conforms in all respects to the original appropriation(s) of Reed Act funds authorizing the acquisition of the disposed property and is permissible under State law. Such transactions may not result in a new obligation of Reed Act funds. If the property being replaced is worth more than the replacement, the excess cash proceeds received or equivalent cash must be handled as described above with respect to excess Reed Act proceeds or profits.[29]

Finally, the disposition requirements described above apply to any disposition involving a replacement where Federal or Reed Act equity is moved from one State-owned property to another. The disposition must benefit the Federal award, and be carried out through a formal, documented transaction, which is approved and executed by the ETA grant officer and a representative of the State who is authorized to carry out the transaction. Federal equity must be computed based on the current fair market value attributable to the portion of the property that was amortized with UI and W-P grant funds, and the costs of any improvements. Reed Act equity must also be computed based on current fair market value of the property's Reed Act equity (including profit). The State must have the property appraised to assess its current fair market value as discussed in section 9. The UI and W-P equity that is moved must be used solely to carry out activities authorized under WIOA, SSA Title III, or the W-P Act. With respect to the Reed Act equity that is moved, the SWAs must follow the UI and/or W-P program occupancy requirements described above in this section of the TEGL. The

[29] See UIPL 39-97, Attachment 1, section G, para. 2a and b.

dollar amount of the equity moved (based on the fair market value of the property from which it is being moved) and the current fair market value of the building to which the equity is being moved (based on an appraisal as described in section 9) must be documented and provided to ETA. This includes the dollar amount of Reed Act equity that funded the building (including improvements) from which the equity was moved and the particular Reed Act account(s) from which these funds originated. After the equity is moved as described above, the new equity amounts must be recalculated. Any disposition of the property to which the equity was moved must follow the disposition requirements set out above in this section of the TEGL.

Accounting for Federal Equity after Sale or Retention of Property for Other Purposes: The amount attributable to the Federal equity (whether the property was retained for other purposes or sold) must be accounted for by the State and recorded in the State's books. When any of this amount is expended, the amount must be reported on line 11b of the quarterly ETA-9130 financial status report. In addition, the expenditures must be recorded in the State's book of accounts and included within the scope of the SWA's annual Single Audit. Proceeds from the disposition of real property are not defined as program income (2 CFR 200.307(d)).

12. Inquiries. Questions regarding this guidance should be directed to the appropriate ETA Regional Office.

13. References.

- Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128);
- Workforce Investment Act of 1998 (WIA) (Pub. L. 105-220);
- Social Security Act (SSA), Title III (42 U.S.C. 501, et seq.);
- SSA, Title IX (42 U.S.C. 1101, et seq.);
- Wagner-Peyser Act, 29 U.S.C. sec. 49, et seq., as amended by WIOA Title III;
- Job Training Partnership Act (JTPA) (Pub. L. 97-300);
- Federal Unemployment Tax Act (FUTA) section 3304(a)(4)(26 U.S.C. 3304(a)(4));
- Revised Continuing Appropriations Resolution 2007 (Pub. L. 110-5);
- The Uniform Guidance: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 and 2900 (DOL rules);
- Uniform Guidance, Appendices II, IV through VIII;
- 20 CFR 651.10;
- 20 CFR Part 678;
- 20 CFR Part 683;
- 20 CFR 602.16 (1961) ;
- 29 CFR Part 97;
- 34 CFR 361.315;
- 34 CFR 463.315;
- GAL No. 05-94, *Acquisition, Use, and Disposition of SESA Real Property* (January 24, 1994);

- TEGL 17-16, *Infrastructure Funding of the One-Stop Delivery System*, (January 18, 2017);
- TEGL No. 16-16 *One-Stop Operations Guidance for the American Job Center Network*, (January 18, 2017);
- TEGL No. 3-07, *Transfer of Federal Equity in State Real Property to the States* (August 1, 2007);
- TEGL No. 7-04, *Issues Related to Real Property Used for ETA Program Purposes* (October 20, 2004);
- UIPL No. 39-97 *The Reed Act Provisions of Title IX of the Social Security Act* (September 12, 1997);
- Department of Labor (DOL) Employment Security Manual, Part IV (sections 2520-2529);
- Internal Revenue Service (IRS) Publication 946;
- Generally Accepted Accounting Principles (GAAP);
- ETA-9130 Forms and Instructions at https://doleta.gov/grants/financial_reporting.cfm#ETA-9130_Forms_and_Instructions; and
- Office of Management and Budget (OMB) Circular A-87 (2004).

14. Attachment. Not Applicable.