

Federal Interest & Facilities: Key Definitions

45 CFR §1309

45 CFR §1309 describes the procedures for applying for Head Start grant funds to purchase facilities and the conditions under which grant funds may be awarded. It also specifies the measures which must be taken to protect Federal Interest.

What is A Federal Interest?

A Federal Interest is the current fair market value of property attributable to the Federal share in the property (45 CFR §74.32(c)(3) and 45 CFR 1309.21(a)).

What types of property are subject to a Federal Interest?

- ▶ Real property
- ▶ Equipment
- ▶ Intangible property
- ▶ Debt instruments that are acquired or improved with Federal funds - 45 CFR §74.37

Facilities which are acquired or undergo major renovations using Head Start funds are subject to a Federal Interest (45 CFR §1309.20):

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee.

- ⇒ Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- ⇒ Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

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

Modular Unit means a portable pre-fabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

Purchase means to buy an existing facility either outright or through a mortgage.

Acquire means to purchase or construct in whole or in part with Head Start grant funds, including outright purchase and mortgage payments.

Major renovation means:

- ⇒ A structural change to the foundation, roof, floor or exterior of load bearing walls or an extension to increase floor space.
- ⇒ Extensive alteration of an existing facility as to significantly change its function and purpose, even without structural changes.

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- ⇒ Any renovation with cost exceeding the lesser of \$200,000 (adjusted annually for CPI-U as of June 2) or 25% of the total annual approved direct costs of the grantee.

RENTING PROPERTY

Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed under the applicable cost principles had title to the property been vested in the recipient (depreciation or use allowance).

Less-than-arms-length

See Cost Principles (2 CFR §220, 2 CFR §225, 2 CFR §230)

HHS Policy Statement-Rental or Lease of Facilities and Equipment

- ▶ An arrangement between two parties in which one party is able to control or substantially influence the other.

- ▶ Factors in determining less-than-arms-length relationships:

⇒ The two organizations share executive staff and/or Governing Body/Tribal Council members.

⇒ One organization is owned or managed by spouses/close relatives of the other organization

PURCHASING, CONSTRUCTING, RENOVATING & OWNING PROPERTY

45 CFR §74.32 (see also ACYF-PI-HS-06-05) says that real property subject to a Federal Interest may not be “encumbered” without the permission of the awarding agency.

What does it mean when property is encumbered?

- ▶ **Encumbrance** (incumbrance) n. a general term for any voluntary or involuntary claim or lien on a parcel of real property. These include: mortgages, deeds of trust, recorded abstracts of judgment, unpaid real property taxes, tax liens, mechanic's liens, easements, and water or timber rights. While the owner has title, any encumbrance is usually on record (with the County Recorder or Recorder of Deeds) and must be paid for at some point.

45 CFR §74.37 and 45 CFR §1309.21 say that a grantee must “*record*” appropriate Notices of Federal Interest.

What does it mean when a notice is recorded?

- ▶ **Recording.** A process by which proof of ownership of real property and notice any matters affecting title to real property are filed in the appropriate county office or court to allow purchasers, creditors, and other interested third parties to determine the status of the property and any interests therein.

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What are the standards for Procurement?

Head Start grantee agencies are required to establish their own written procedures based on Federal standards for purchasing services, supplies and other expendable property, equipment, and real property. The standards for procurement are found in regulations 45 CFR 74.40 - 74.48 for institutions of higher education, hospitals, and other non-profit organizations, and commercial organizations; and in 45 CFR 92.36 for local government organizations.

What is the Davis-Bacon Act?

The **Davis-Bacon Act** of 1931 is a United States federal law which established the requirement for paying prevailing wages on public works projects. All federal government construction contracts, and most contracts for federally assisted construction over \$2,000, must include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects.