

## Facilities Guidance Attachment

### ACF-OHS-IM-24-04

The Office of Head Start (OHS) is committed to the provision of child development services in high-quality facilities with safe indoor and outdoor learning environments. This Information Memorandum (IM) is intended to support recipients in understanding the Head Start application and funding process for facilities activities. OHS is providing this guidance based on the [recently revised Head Start Program Performance Standards](#) (the Performance Standards) published on August 21, 2024.

This IM attachment supersedes ACF-IM-HS-17-01.

Head Start grant funds in approved budgets may be used for the payment of rent under operating leases and for repairs and minor renovations to facilities. The use of grant funds to make payments under a capital lease, as noted in [45 CFR §75.465\(c\)\(5\)](#) and defined by Generally Accepted Accounting Principles (GAAP), must either be limited to the amount that would be allowed if the nonfederal entity purchased the property on the date the lease agreement was executed or, if the recipient will acquire title under capital lease, approved in accordance with [45 CFR §§1303.44 and 1303.45](#).

Other facilities activities using Head Start grant funds, including purchase, construction, and major renovations, require a separate application for funding ([45 CFR §§1303.44–45](#)).

The term "Head Start" is used inclusively for Head Start Preschool, Early Head Start, Early Head Start-Child Care Partnerships, Migrant and Seasonal Head Start, and American Indian and Alaska Native programs. Find definitions of other important terms and phrases used throughout this IM and the Performance Standards at [Terms, 45 CFR §1305.2](#).

Regulations applicable to [facilities](#) activities funded by OHS are found primarily at:

- [Facilities, 45 CFR §1303 Subpart E](#) of the Performance Standards
- [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Health and Human Services \(HHS\) Awards](#) (the Uniform Guidance)
- [HHS Grants Policy Statement \(GPS\)](#), including subsequent [revisions or amendments](#)

Additional guidance is available below and on the [Head Start website](#).

### Availability of Funds

Recipients are required to submit one-time funding applications for facilities activities beyond the scope of those that are part of a program's approved budget. This ensures OHS can fully understand real property needs. However, the availability of these funds is often limited and OHS typically cannot fund all requests for facilities activities.

Requests for facilities funding are subject to funding availability and priorities established by OHS and reflected in notices of funding opportunity.

## Planning

Recipients are encouraged to engage in careful planning to ensure proposed facility activities address identified health and safety issues, reflect the results of a community assessment, and are eligible for funding under [45 CFR §1303.42](#). Guidance and other materials to support planning for real property activities are available on [the Head Start website](#).

Recipients may submit a written request for funding under [45 CFR §1303.43](#) for reasonable fees and costs necessary to submit an application under 45 CFR §§1303.42 and [1303.44](#). Once HHS approval is granted to use federal funds for the following and related preliminary activities, the funds are allowable regardless of the outcome of the preliminary eligibility:

- Feasibility studies
- Title commitment or title search
- Cost estimates
- Initial indoor and outdoor environmental testing to ensure suitability of the facility project being considered

It is strongly recommended that recipients discuss facilities projects with their regional program specialist and grants management specialist well before submitting a full application under 45 CFR §§1303.44 and [1303.45](#).

## Applications

Recipients may submit an application to the Head Start Enterprise System (HSES) to use Head Start funds to [purchase](#) or [construct](#) facilities, and for [major renovation](#) of facilities owned by the recipient or leased from a third party.

Applications for facilities funding require the use of the [SF-429 Real Property Status Report](#) with attachment SF-429-B Request to Acquire, Improve, or Furnish. Additional information needed to meet the requirements of 45 CFR §§1303.44 and 1303.45 must accompany the SF-429 and SF-429-B forms.

Note that while a separate supplemental application is needed when requesting additional federal funds, an additional 1303 application is not required for [repairs](#) or [minor renovations](#). However, such activities may require prior written ACF approval if they meet the conditions of [45 CFR §75.308](#). An example is a kitchen repair that includes the purchase of equipment for which prior written approval is required by 45 CFR §75.308(c)(1)(xi).

## Federal Interests

A [federal interest](#) in real property is created when a recipient uses Head Start or other federal funds to purchase or construct [real property](#) or conduct major renovations on leased or owned

property. Protection of the federal interest is required by the Performance Standards, [45 CFR §75.323](#) of the Uniform Guidance, and GPS. The federal interest includes:

- Total project costs paid with federal funds
- Those amounts awarded directly from OHS
- Amounts claimed by the recipient as cost sharing or matching for the project

Following a grant competition, recipients need to be prepared to assume responsibility for facilities with federal interest.

Recipients are required to file a notice of federal interest in the official real property records for the jurisdiction where the real property is or will be located, except modular units ([45 CFR §1303.46\(b\)\(1–3\)](#)). Notices of federal interest for modular units must be posted on the units ([45 CFR §1303.46\(b\)\(4\)](#); [45 CFR §75.323](#)). The Performance Standards at [45 CFR §§1303.46–49](#) detail requirements for timing, content, where to file or post notices of federal interest, and instructions for submitting copies of filed or posted notices. A federal interest cannot be defeated by a recipient’s failure to file a required notice of federal interest ([45 CFR §1303.46\(a\)](#)).

If a grant recipient receives federal funds to purchase, construct, or renovate a facility on leased property or land, the lease or other occupancy agreement must be ([45 CFR §1303.50](#)):

- At least 30 years for purchase or construction of a facility
- At least 15 years for a major renovation or placement of a modular unit

Lease or occupancy agreements that include the language under [45 CFR §§1303.50](#) and [1303.47](#) may be recorded in the official real property records for the jurisdiction where the facility is located to serve as a notice of federal interest. Recipients are encouraged to consult their regional grants management specialist and program specialist to assure the lease contains the required terms and conditions.

## **Repairs, Minor Renovations, and Major Renovations**

Recipients should familiarize themselves with the definitions of these terms in [45 CFR §1305.2](#).

Repairs and minor renovations, as defined, do not result in a federal interest or require the filing of a notice of federal interest. Major renovations require full compliance with [45 CFR §1303 Subpart E](#). While not common, a recipient may engage in a collective group of renovation activities in a single facility — the aggregate value of which exceeds \$350,000, or higher to match any additional increases made to the simplified acquisition threshold — to address a specific part or feature of a facility.

If a recipient intends to spend more than \$350,000 (or higher to match any additional increases made to the simplified acquisition threshold) for a major renovation or a collective group of renovation activities, the recipient must submit to ACF — before starting the proposed repairs — a certification from a licensed, independent architect or engineer. The certification must indicate that the expenditures identified as repairs do not add significant value to the real property to be

repaired or extend its useful life. If it is not provided, the activity will be classified as a major renovation and compliance with 45 CFR §1303 Subpart E is required.

Head Start Act [Sec. 644\(g\)\(3\)](#) applies the [Davis-Bacon and Related Acts](#) to contractors and subcontractors engaged in covered Head Start facility construction and renovation activities in excess of \$2,000. Covered Davis-Bacon Act activities are construction, alteration, or repairs including painting or decorating. If more than \$2,000 of Head Start funds are used toward the cost of covered activities, the Davis-Bacon Act applies. Recipients engaging in facilities activities of any type should familiarize themselves with the [requirements](#) of the Davis-Bacon Act to assure compliance.

## **Financing, Refinancing, and Pledges of Collateral**

Prior ACF approval is required in all circumstances where real property subject to a federal interest is pledged as collateral ([45 CFR §1303.48\(a\)](#)). Such circumstances include mortgages, refinancing of existing facilities debt, and general or “blanket” pledges of collateral. Recipients requesting prior approval to use property subject to a federal interest as collateral must submit [SF-429 Real Property Status Report](#) and attachment SF-429-C Disposition or Encumbrance Request.

The Performance Standards require that loan agreements with third-party lenders for property subject to a federal interest contain language providing ACF with certain rights, as described in [45 CFR §1303.49\(a\)\(1–7\)](#). These include:

- Notice of any borrower default in payment or performance
- An opportunity to cure the default
- The right to direct assignment of the loan to another recipient

Recipients are also required to immediately notify ACF of any default in a loan agreement secured by property subject to a federal interest ([45 CFR §1303.49\(b\)](#)). Recipients who successfully compete for a new service area may be required by OHS to accept facilities or assignment of loans associated with facilities continuing in Head Start use.

Recipients should be aware that loans with short-term maturity dates of less than 15 years (interest-only) will not generally be approved by ACF. A capital lease resulting in acquisition of title to real property requires prior ACF approval. It will only be considered in those rare instances where the recipient acquires title to the property but the cost of title acquisition under the capital lease does not exceed the value of the property at the time the capital lease is or was entered into.

As noted below, absent prior ACF approval of a capital lease, rental costs under leases that are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the nonfederal entity purchased the property on the date the lease agreement was executed. [45 CFR §75.465\(c\)\(5\)](#).

## **Subordination Agreements**

A subordination agreement is a legal contract between ACF and a lender that allows the lender to establish first lien status on property already subject to a federal interest. Only ACF can agree to a subordination of the federal interest to the rights of a lender. Common situations where subordination agreements are requested include:

- Use of Head Start funds as a down payment with an accompanying mortgage for the balance of the purchase price
- When property subject to an existing mortgage is refinanced after acquisition

Recipients requesting a subordination agreement from ACF must submit SF-429 Real Property Status Report and attachment SF-429-C.

When the amount of federal funds already contributed to the facility prior to the subordination exceeds the amount to be provided by the lender seeking subordination, [45 CFR §1303.51](#) requires the recipient to show that funding is not available without subordination of the federal interest. This could be shown, for example, by a letter from the proposed lender stating that it will not fund the proposed loan without subordination of the federal interest.

Recipients are encouraged to consult their regional grants management specialist prior to submitting a subordination request. This will ensure that the proposed subordination agreement includes all required terms and conditions, and that all supporting materials (e.g., an independent appraisal of the current value of property at issue and proposed loan documents) are completed and available to accompany the subordination request.

## **Leases**

Facility leases are classified for accounting purposes as either operating or capital leases. To determine allowable costs, property subject to a capital lease is treated as though it were owned by the recipient ([45 CFR §75.465\(c\)\(5\)](#)), while the reasonable costs of operating leases are ongoing operating expenses. Capital leases resulting in the acquisition of title by the lessee (recipient) are sometimes referred to as lease-purchase agreements.

Sale and leaseback agreements are treated similarly to capital leases ([45 CFR §75.465\(c\)](#)). If a recipient is party to a less-than-arms-length lease as described in [45 CFR §75.465\(c\)\(1–4\)](#), charges against the Head Start award are also limited in accordance with [45 CFR §75.436](#).

Rental costs under capital leases (except where previously approved in writing by ACF as a purchase), sale and leaseback agreements, and less-than-arms-length lease arrangements are allowable only up to the amount that would be allowed had the recipient owned the leased property. This amount includes expenses such as depreciation, maintenance, taxes (if the recipient is not exempt), and insurance ([45 CFR §75.436](#)).

## **Depreciation**

Recipients may charge their Head Start award for allocable and allowable depreciation of recipient-owned facilities used for Head Start program purposes ([45 CFR §75.436](#)). Allowable annual depreciation is generally the acquisition cost of a facility (excluding land) divided by the useful life of the facility as established in the recipient's financial statements.

Depreciation must be adjusted (allocated) to reflect the extent of Head Start usage of the facility. It cannot include any portion of the cost of the facility (acquisition or major renovation) acquired through the use of or claimed as nonfederal match for Head Start funds (45 CFR §75.436(b-d)). For example, if the acquisition cost of a recipient-owned facility, excluding land, is \$800,000 and its useful life is 40 years, allowable annual depreciation is \$20,000 per year if the facility is used 100% for Head Start purposes and no federal funds or nonfederal match have contributed to the acquisition cost of the facility.

*Scenario 1:* If only 60% of the facility is used for Head Start services, the amount of annual allowable depreciation noted above must be reduced to 60% of the otherwise allowable amount, resulting in depreciation of \$12,000.

*Scenario 2:* If 30% of the cost of the facility was paid with Head Start funds, 30% of the amount of annual allowable depreciation noted above must be deducted, leaving 70% of the otherwise allowable amount or \$14,000.

*Scenarios 1 and 2 combined:* If only 60% of the facility is used for Head Start purposes and 30% the cost of the facility was paid with Head Start funds, the amount of annual allowable depreciation noted above must be adjusted for both extent of Head Start use and federal share.

- Step 1: Adjustment for Head Start usage at 60% = \$12,000.
- Step 2: A further 30% reduction of the amount arrived at in Step 1 (70% x \$12,000) produces final allowable depreciation in the amount of \$8,400.

Charges for depreciation must be supported by adequate depreciation and property records, and physical inventories must be taken at least once every two years (45 CFR § 75.436(e)). Allowable amounts of annual depreciation may be charged against the recipient's Head Start award or claimed as nonfederal match if the recipient foregoes the charging of otherwise allowable depreciation.

## **Reporting and Recordkeeping**

All recipients are required to complete and submit real property status information annually using the [SF-429 Real Property Status Report](#), including attachment SF-429-A General Reporting. Additional information must be reported for each piece of property in which a [federal interest](#) exists, even if the recipient has not filed or posted the required notice of federal interest ([45 CFR §1303.46\(a\)](#)).

Recipients must retain records pertinent to the lease, purchase, construction, or renovation of a facility funded in whole or in part with Head Start funds for as long as the recipient owns or

occupies the facility, plus three years ([45 CFR §1303.54](#)). In the circumstances identified in [45 CFR §75.361\(a–f\)](#), record retention may be required for periods in excess of three years. If a recipient is charging depreciation to its Head Start award, those charges must be supported by adequate property records supporting acquisition cost and useful life, and physical inventories must be taken at least once every two years ([45 CFR §75.436\(e\)](#)).

## **Valuation and Matching**

The determination of value must be made by an independent real property appraiser certified or licensed in the state where the property is located ([45 CFR §75.306\(i\)\(1\)](#)). The appraiser must be licensed for the type of property appraised, generally commercial real estate. An appraisal more than three years old cannot be used to establish the current value of real property. The appraisal can be conducted on-site or virtually ([45 CFR §1303.44\(a\)\(7\)](#)).

Fair market rental value is the amount that a recipient would have to pay to rent comparable space in the community. The claimed value of donated space must not exceed the fair market rental value of comparable space, as established by an independent appraisal of comparable space in a privately-owned building in the same locality ([45 CFR §75.306\(i\)\(3\)](#)).

To establish fair market rental value of donated space from an unrelated party, the required fair market rental value may be established by an appraiser as described above, or by a licensed and independent real estate broker or agent familiar with the rental market in the local community. An appraisal more than three years old cannot be used to establish current fair market rental value of donated space.

If space is donated by a related party, the amount of matching the recipient may claim is limited to the amount that could have been claimed had the recipient been the titleholder of the property. The matching is generally those amounts described in [45 CFR §75.436](#).

## **Disposition**

When real property subject to a federal interest is no longer needed for program purposes ([45 CFR §75.318\(b\)](#)), recipients must request that ACF provide disposition instructions for the property ([45 CFR §75.318\(b–c\)](#)). Disposition requests are made using [SF-429 Real Property Status Report](#) and attachment SF-429-C Disposition or Encumbrance Request.

ACF may also instruct a recipient to dispose of real property if the recipient is no longer funded to provide services in the area in which the real property is located. This may occur when a recipient relinquishes its Head Start award, is de-funded by OHS, or does not retain the service area as a result of designation renewal competition.

A recipient may request that real property subject to a federal interest be used in another federally sponsored program offered by the recipient with a purpose similar to Head Start programs ([45 CFR §75.318\(b\)\(2\)](#)). If use in another program is not possible or not approved, ACF may direct the recipient to undertake one of three disposition options.

1. The recipient may be instructed to retain the property title subject to a federal interest and compensate ACF for the value of the federal interest in the property (45 CFR §75.318(c)(1)).
2. ACF may direct the recipient to sell the property, allocating the proceeds between ACF and the recipient based on their relative interests in the property (45 CFR §75.318(c)(2)).
3. The recipient may be directed to transfer the property title to a third party with compensation for the value of the recipient's share of the property (45 CFR §75.318(c)(3)).

With prior ACF approval, 45 CFR §75.318(c)(1) allows the recipient to use the net proceeds of the sale of property subject to a federal interest to offset the cost of replacement property acquired under the same federal award. Since the option of using sale proceeds to offset the cost of replacement property did not uniformly exist under regulations applicable prior to December 26, 2014, recipients proposing to use sale proceeds to acquire replacement property must formally adopt the Uniform Guidance for all of their existing facilities awards. This requirement is reflected in the recipient's fiscal policies and procedures and approved by their governing body and Policy Council.

Recipients may indicate their use or disposition preference on the disposition request. However, ACF has the discretion to instruct a recipient to engage in another method of disposition which may better suit program needs. If a disposition instruction requires compensation by ACF of a recipient's share in real property, the recipient must provide documentation of the source, amount and any restrictions or condition associated with funding for any claimed recipient share. Costs of purchase, construction, or major renovations to the property previously claimed by the recipient as cost sharing or match to the Head Start award are part of the [federal interest](#). Failure to comply with disposition instructions issued by ACF may result in denial of close-out funding or adverse action against the recipient.

To determine the current value of the federal interest and recipient share in connection with disposition of real property, current fair market value must be established by an independent real property appraiser certified or licensed in the state where the property is located (GPS). Once current fair market value is established, the value of the federal interest and recipient equity, and other third-party interest or equity if applicable, are determined by calculating the respective federal, recipient, and any third-party contributions to the property. The resulting percentages are applied to the current fair market value.

All claim amounts included in the calculation of recipient contribution must be adequately documented. They cannot include funds or property subject to a third-party use restriction, reversionary interest, encumbrance, or similar condition. In the event of disposition requiring ACF compensation of recipient share, it is the responsibility of the recipient to produce adequate documentation to establish recipient equity upon receipt of disposition instructions.

If it is necessary to establish federal interest and recipient equity in connection with a disposition, recipients are encouraged to work closely with their regional program specialist and grants management specialist throughout the disposition process.



## Conclusion

Using Head Start funds to purchase, construct, and majorly renovate real property provides an important opportunity for recipients. It's a way to ensure that services to children and families are provided in high-quality facilities that support school readiness and enhance the delivery of those comprehensive services. Real property activities funded by OHS represent significant investments intended to benefit children and families in the local community over extended periods of time.

Although recipients are permitted to hold title to real property acquired or improved with OHS funds, the property is held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved ([45 CFR §75.323](#)). Compliance with the requirements of [45 CFR Part 1303 Subpart E](#) and [45 CFR Part 75](#) is mandatory to ensure ongoing availability of real property for program use. The requirements also protect the recipient from future risk of audit issues, monitoring findings, and potential disallowance of previously awarded funds.

Recipients considering real property activities covered by the Performance Standards, Uniform Guidance, and Grants Policy Statement are encouraged to consult their program specialist and grants management specialist early in the project development process to ensure compliance with all requirements that apply to real property activities funded by OHS.