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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION SWA Real Property |
| | CORRESPONDENCE SYMBOL OFAM |
| | DATE August 1, 2007 |

ADVISORY : TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-07

TO : ALL STATE WORKFORCE LIAISONS
ALL STATE WORKFORCE AGENCIES

FROM : EMILY STOVER DeROCCO /s/
Assistant Secretary

SUBJECT : Transfer of Federal Equity in State Real Property to the States

1. **Purpose.** To provide procedures implementing the amendment to Section 193 of the Workforce Investment Act of 1998 enacted by the Revised Continuing Appropriations Resolution, 2007, Public Law (P.L.) 110-5.
2. **Scope.** This Training and Employment Guidance Letter (TEGL) applies to equity in all state real property acquired either wholly or partially through grant funds awarded under the Wagner-Peyser (W-P) Act or Title III of the Social Security Act (SSA), the latter referenced hereafter as Unemployment Compensation (UC). This TEGL also discusses the impact of this amendment on properties in which there continues to be Reed Act equity.
3. **Authorities and References.** Workforce Investment Act (WIA) Section 193 – Transfer of Federal Equity in State Employment Security Real Property to the States, 29 U.S.C. 2943; Revised Continuing Appropriations Resolution, 2007, P.L. 110-5; Sections 301-304, SSA, 42 U.S.C. 501-504; Section 903(c), SSA, 42 U.S.C. 1103 (c); Wagner-Peyser Act (29 U.S.C. 49 et seq.); 29 CFR Part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87); TEGL No. 7-04; and Unemployment Insurance Program Letter (UIPL) No. 39-97.
4. **Background.** UC, W-P, and Reed Act equity in state real property was created whenever UC or W-P grant funds, or Reed Act funds, were used to amortize or pay the costs of acquiring property or making capital improvements to such property. The creation of these equities through the use of grant or Reed Act funds derived from the replacement property provision at 29 CFR 97.31. Section 193(a), WIA, prior to its recent amendment, authorized a One-Stop service delivery system to use real property having UC, W-P, or Reed Act equity as of the date of WIA's enactment. Section 193(b) permitted the use of UC, W-P, and Reed Act funds to acquire further equity in such property, or to pay the operating and maintenance expenses

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relating to such property, only in proportion to the extent of the use of such property for activities authorized under the UC or W-P programs or the Reed Act. Section 15 of TEGL No. 7-04, issued on October 20, 2004, advised states that, based on a revision to governing authority in OMB Circular A-87, UC or W-P grant funds could no longer be used to amortize the cost of real property, except in limited cases for pre-existing amortization plans approved by the Department on a case-by-case basis for up to five years.

Effective February 15, 2007, Section 20610 of P.L. 110-5 amended Section 193 of WIA to read as follows:

TRANSFER OF FEDERAL EQUITY IN STATE EMPLOYMENT SECURITY REAL PROPERTY TO THE STATES.

(a) Transfer of Federal Equity—Notwithstanding any other provision of law, any Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act (42 U.S.C. 501 et seq.) or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under this Act, the Wagner-Peyser Act (29 U.S.C. 49 et seq.), or title III of the Social Security Act (42 U.S.C. 501 et seq.). Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under this Act, the Wagner-Peyser Act, or title III of the Social Security Act.

(b) Limitation on Use—A State shall not use funds awarded under this Act, the Wagner-Peyser Act, or title III of the Social Security Act to amortize the costs of real property that is purchased by any State on or after the date of enactment of the Revised Continuing Appropriations Resolution, 2007.

This amendment transferred equity in real property acquired with UC and W-P grant funds to the states effective February 15, 2007. It provided also that the disposition proceeds from the sale of any properties on or after February 15, 2007, are to be used solely for program activities authorized under WIA, UC, and W-P. WIA, UC, and W-P grant funds may not be used for real property amortization even under the narrow circumstance previously permitted as advised by TEGL No. 7-04. Finally, this amendment also eliminated the authorization to use properties with equity acquired using Reed Act funds for the WIA One-Stop service delivery system. More detailed instructions are below.

- 5. Continued Use of Property for WIA, UC, and W-P Purposes.** The amended Section 193(a), WIA, effective February 15, 2007, transfers existing equity in real property acquired or amortized with UC and W-P grant funds to the states for use in carrying out WIA, UC, and W-P activities. Accordingly, properties with equity acquired using UC and W-P grant funds may continue to be used for WIA service delivery. Section 193, WIA, no longer authorizes the use of properties with equity acquired using Reed Act funds for the WIA One-Stop service delivery system. Nevertheless, Section 903(c)(2), SSA, permits Reed Act monies to be used for UC and W-P administration. Therefore, properties having Reed Act equity may be used for the WIA One-Stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the UC and W-P programs in such properties.

For example, if a property used as a One-Stop facility has 25 percent Reed Act equity, and its occupancy is 50 percent UC and W-P programs and 50 percent other One-Stop partner programs, there is no problem because all the Reed Act equity may be attributed to UC and W-P program occupancy, as permitted under the Reed Act.

However, if the same property has 75 percent Reed Act equity, but UC and W-P program occupancy is 50 percent, there is a 25 percent Reed Act equity that may not be used for other One-Stop partner programs due to the amendment to Section 193, WIA. In this latter instance, the state would have to reduce non-UC and W-P program occupancy to 25 percent, or replace the remaining 25 percent of Reed Act equity with non-Federal funds or other Federal agency funds (to the extent permissible under their applicable requirements), or use some combination of reduced occupancy and non-Federal or other Federal agency funds to ensure that the property's share of Reed Act equity does not exceed its share of UC and W-P program occupancy.

6. **Disposition of Property.** The amended Section 193, WIA, requires that the Secretary prescribe procedures for property disposition. These procedures are outlined below.

For all properties disposed of on or after February 15, 2007, the provisions at 29 CFR 97.31(c) no longer apply. When a property is no longer needed for the purposes for which it was acquired, a state may either retain the property for other purposes or sell the property. A disposition while retaining the property for other purposes means that WIA, UC, and W-P activities entirely vacate the property, but the state retains the property for other activities.

If the property is retained for other purposes, a state must have it appraised to assess its current fair market value. The cash equivalent of the fair market value attributable to the portion of the property amortized using UC and W-P grant funds must be used solely for program activities authorized under WIA, W-P, or UC. Neither the original nor the amended Section 193, WIA, requires that W-P or UC programs' use of the proceeds for those programs be proportional to the respective share of each program's equity. The combined UC and W-P portion must be calculated by applying the percentage of participation in the cost of the original purchase by these programs to the fair market value of the property.

Similarly, the cash equivalent of the fair market value attributable to Reed Act equity in the property must be calculated by applying the remaining percentage of participation by Reed Act funds, after subtracting the percentage of original Reed Act participation amortized with UC and W-P grant funds, in the cost of the original purchase to the fair market value of the property. The cash equivalent of the fair market value attributable to the remaining Reed Act equity must be returned to the state's account in the Unemployment Trust Fund (UTF). The state must deposit non-Federal funds representing the cash equivalent of the Reed Act equity into the appropriate accounts in the UTF. As explained in UIPL 39-97, Attachment 1, Part G.2 (dated September 12, 1997), 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 original Reed Act expenditure on the real property, because only amounts transferred to the state's account under Section 903, SSA, have Reed Act status. The amount credited as Reed Act funds may be used only for authorized Reed Act purposes consistent with Reed Act requirements.

If the property is sold, the sales proceeds attributable to that portion of the property amortized using UC and W-P grant funds must be used solely for program activities authorized under WIA, W-P, or UC. The proportional use for each of the programs is at the discretion of the state because, as noted above, there is no requirement that each program's

use of the proceeds be in proportion to its respective share of equity. If the sold property has any Reed Act equity, the sales proceeds attributable to that portion of the property must be returned to the state's account in the UTF. As noted above in the case of property retained for other purposes, sales proceeds deposited in the state's account in the UTF will be credited as Reed Act funds only up to the amount of the original Reed Act expenditure on the real property. The amount credited as Reed Act funds may be used only for authorized Reed Act purposes consistent with Reed Act requirements.

When a property is disposed of under either of the above options, a state must notify its appropriate Regional Office of the amount that is to be used for program activities authorized under WIA, W-P, or UC.

In addition, interest earned on the disposition proceeds attributable to that portion of the property amortized using UC and W-P grant funds are to be used, just as disposition proceeds, solely for program activities authorized under WIA, W-P, or UC.

Expenditure of these disposition proceeds are to be reported on the quarterly financial status reports of the appropriate programs in accordance with reporting instructions that will be issued at a later date. These expenditures must be recorded in a state's book of accounts and included within the scope of its annual A-133 audit.

For all properties disposed of prior to February 15, 2007, the only allowable use of disposition proceeds is for replacement property purchases, or to make capital improvements to other State Workforce Agency (SWA) buildings. ETA approval is required to use these proceeds to acquire replacement property; approval will be determined on a case-by-case basis. Section 97.31(c) of 29 CFR requires states to request disposition instructions from the awarding agency in these cases, which will provide for one of three alternatives:

- Retention of title after compensating the awarding agency;
- Selling the property and compensating the awarding agency; or
- Transferring title to the awarding agency or to a third party designated/approved by the awarding agency.

For the first two alternatives, 29 CFR 97.31 continues to require states to forward to DOL any net proceeds realized either from the sale of SWA buildings or the fair market value amount for retained property.

7. **Limitation on Use.** Subsection (b) of the amended Section 193, WIA, prohibits states from using any program funds (including funds under WIA, UC, or W-P) to amortize the costs of real property (see also TEGL No. 7-04, Section 15, which, as explained above in Section 4 of this TEGL, discussed a similar prohibition under OMB Circular A-87). Waivers that allowed continued amortization in limited circumstances under TEGL No. 7-04 are no longer authorized. Neither the amended Section 193 nor this TEGL addresses the use of Reed Act funds for real property acquisitions. This matter is addressed in UIPL 39-97, Attachment 1, Part G.
8. **Action Required.** States must take the following steps and provide information, through their appropriate ETA Regional Office, to the DOL National Office.

- a. Immediately examine their real property procedures, amortization arrangements, and charges to ETA grants for premises costs to ensure compliance with the requirements of 29 CFR 97.31, Section 193, WIA as amended, and TEGL No. 7-04;
- b. As noted in item 6 above, update their records to reflect historical and current information on the costs of real property acquisitions (land, buildings, interest, and capital improvements) and the Federal fund sources (UC, W-P, and transferred equity) used for such acquisitions to identify and determine what action is needed for disposition proceeds on hand (as is the usual procedure with which states should be familiar, a Field Memorandum will be issued to Regional Administrators later this year that will announce the 2007 SWA Real Property Biennial update and provide procedural guidance); and
- c. Forward to DOL any unencumbered disposition proceeds (i.e., disposition proceeds for which DOL has not approved a specific use) realized prior to February 15, 2007. Please send a check, payable to the "U.S. Department of Labor", along with supporting documentation that identifies and explains the nature of the unencumbered disposition proceeds (e.g., "Disposition proceeds from sale of the Employment Security Building at 310 Howard Street, Columbia, ST on May 23, 2002") to:

Chief, Division of Financial Systems and Services
Office of Financial and Administrative Services
200 Constitution Avenue, NW, Room N-4702
Washington, DC 20210

- 9. Inquiries.** Questions should be addressed to the appropriate ETA Regional Office.