

USM Disposal of Equipment Purchased with Sponsor Funds

Issuing Authority: Cutler Institute for Health and Social Policy

Responsible Officer: University Provost

I. Purpose of This Policy

The purpose of this policy is to provide guidance to Principal Investigators (PI's) and departments or units for disposing of federally-funded equipment in accordance with federal Office of Budget and Management (OMB) Circulars, sponsor requirements, and University policies.

II. Policy

It is the policy of the University of Southern Maine (USM, "the University") that equipment acquired with federal funding will be disposed of in accordance with federal regulations, sponsor requirements, and University policies. The management of equipment acquired with federal funding at the University is an integral process supported by Finance and Administration, the University Property Management Office (PMO), the Cutler Institute for Health and Social Policy (Cutler Institute), Deans of the Colleges, and the departments or units.

III. Scope of This Policy

This policy is applicable to USM equipment acquired with federal funding. Equipment can be acquired through purchase, fabrication, donation, or transfer from another institution. For equipment acquired under a federal award granted prior to December 26, 2014, the University manages and disposes of these assets in accordance with federal regulation OMB Circular A-110 and industry accounting standards. For equipment acquired under a federal award granted on or after December 26, 2014, the University manages and disposes of these assets in accordance with the Uniform Administrative Requirements, Cost Principles, and Requirements for Federal Awards, 2 CFR Part 200, and industry accounting standards. The University controls its assets through a mandatory biennial inventory, logistical and financial accountability, and appropriate disposition of unnecessary property.

IV. Definitions

For purposes of this policy,

- a. *University asset* means University-owned personal property.
- b. *Personal property* refers to tangible personal property, such as furniture, fixtures, equipment and machinery, vehicles, individual works of art or artifacts, and intangible personal property such as software.
- c. *Capital Assets* (also capital equipment) are tangible non-expendable personal property purchased and owned by the University, including tax-exempt property charged to the University's accounting system.
- d. To be classified as a capital asset the asset must have a useful life of more than two years and a unit cost of more than \$5,000, or composed of components that, when assembled, exceed a cost of \$5,000.
- e. *Federal Capital Assets* – (*capitalizable assets with a unit cost of \$5,000 or more purchased with federal grant funding*)
- f. *Prior to December 26, 2014 – Circular A-110* is a federal regulation issued as Circular A-110 (and its amendments) and regulates Uniform Administrative Requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. See sections 33 and 34. http://www.whitehouse.gov/omb/circulars_a110/

- g. *As of December 26, 2014 – 2 CFR 200 Uniform Guidance* – Section 200.310 – 200.316 is the Code of Federal Regulation “Uniform Guidance” that defines Uniform Administrative Requirements for federal awards with institutions of higher education, hospitals, and other nonprofit organizations.
http://www.ecfr.gov/cgi-bin/text-idx?SID=597cf895a4e1859ccf447c54c795d4b3&node=se2.1.200_1313&rgn=div8
- h. *Biennial Inventory* – In accordance with [OMB Circular A-21](http://www.whitehouse.gov/omb/circulars/a021/a21_2004.html), *Cost Principles for Educational Institutions* (http://www.whitehouse.gov/omb/circulars/a021/a21_2004.html) and [OMB Circular A-110](http://www.whitehouse.gov/omb/circulars_a110/#71), *Uniform Administrative Requirements for Grants and Agreements with Institutions* (http://www.whitehouse.gov/omb/circulars_a110/#71),
- i. *Asset Disposal Form* – the University’s approved form that controls the disposition process, evidences appropriate University authority for the disposition of an asset, and serves as the official record of asset disposition.
- j. *Bill of Sale* – is a University document prepared by the Seller (University) to the purchaser, for transfer of title of ownership of a specific item of property which is the legal property of the University, to the purchaser in exchange for financial consideration or a value determined by the University. The Bill of Sale must be prepared by the Procurement Services.

V. Procedure

1. Determination of Ownership and Disposition of Property

Before a unit or Principal Investigator takes steps to dispose of equipment purchased with sponsor funds and used in sponsored research, the Property Management Office and the Cutler Institute must first determine whether the sponsor or the University owns the property in question.

- 2. The department Chair or unit Director must provide the University Property Management Office (PMO) and Cutler Institute for Health and Social Policy (Cutler Institute) with a list of equipment proposed for transfer. This list must include a description of the equipment, University account number, University equipment tag number, funding agency and grant or contract number for which the equipment was purchased, and purchase order number. See appendix 1 or visit <http://usm.maine.edu/property-management-forms> for the required form.
- 3. The Director of the Cutler Institute (or their designee) must notify the University Chief Financial Officer (CFO), the Dean of the College, and the department Chair or unit Director in writing that no federal or other regulations prohibit the proposed transfer, and refer to this policy for the procedure to be followed.
- 4. The department Chair or unit Director must also certify in writing to the Dean, the Provost, and the University CFO that the research equipment is unique to the Principal Investigator's current research, and that the department or unit does not need the equipment.
- 5. If the Principal Investigator requires the equipment for further research from the same funding agency that originally funded the equipment, the equipment, even if it is not unique, may be transferred; with agency approval where required.
 - a. "Further research" does not necessarily mean that the specific grant or contract on which the equipment was purchased, or a continuation of that grant or contract must still be active. Nor does there have to be any funded research in the specific area at the precise moment of transfer. The Chair's certification means that the Principal Investigator is actively engaged in research in the area in which the equipment is uniquely necessary, and that he/she is likely to obtain future sponsorship for additional research in that area.
 - b. A standard personal computer would not be defined as "unique to the specific research." On the other hand, a particular scientific instrument, with a variety of uses in a variety of fields, may be classified as "unique."
- 6. An Ad Hoc committee consisting of representation from the Dean of the College, the University Property Management Office (PMO), the Cutler Institute for Health and Social Policy (Cutler Institute), the departments or units, and the Office of Research Integrity and Outreach will decide if the equipment should be retained by the University.

- a. If it is decided that the equipment should be retained by the University, the Dean is responsible for reassignment of equipment to other departments or units as needed within the college.
- b. If all conditions have been met, written authorization for the transfer is to be made according to the value of the equipment, as follows:

Up to \$50,000 – by the University CFO.

50,001 to 100,000 – by the Provost.

Over \$100,000 – by the President.

7. The PMO will make arrangements for written acceptance of the equipment with its counterpart at the institution to which it is being transferred.
8. If the transfer of equipment is not approved by Cutler, equipment must remain on USM's campus. The Director of the Cutler Institute (or their designee) will notify the PI, Dean, Department Chair or Unit Director, the Provost, and the University CFO.

VI. Guidelines for the Disposal of Equipment Purchased with Sponsor Funds

1. Non-Federal Sponsors

- a. Whether the agreement is for a research grant or contract, ownership of any equipment purchased with non-federal funds will generally be specified in the award agreement. Non-federal sponsors may also include conditions in award agreements that place constraints on both the use and disposal of research equipment. By honoring these conditions, the University fulfills obligations to the sponsor that it has assumed under the award agreement.
- b. Title to the property may vest in either the sponsor or the University. If the University is granted title under the agreement, the unit and investigator should follow University-established procedures for the disposal of surplus equipment (Property Management website, <http://usm.maine.edu/property-management>) provided the sponsor does not place restrictions on the disposal of the equipment. If the sponsor retains title, the disposal of the sponsor-owned equipment should be managed in a manner consistent with the conditions contained in the agreement and the wishes of the sponsor.

2. Federal Sponsors

a. Federally-Owned Property [OMB A-110, §33(a)(1)]

Title to federally-owned property remains vested in the Federal Government, unless the federal agency sponsor declares the property to be "excess" or designates it as "exempt property." Federally-titled property generally enters into the control of the University when the cost for a research-related asset is charged to a federal grant or contract that contains provisions that vest title to the asset in the Federal Government. Federally-owned property may come into custody of the University when excess government-owned equipment is acquired from the Federal Government or from a third party using equipment purchased with federal funds and under terms that vest title in the Federal Government. Federally-titled equipment acquired under one sponsored program award to the University and subsequently transferred to another University award remains subject to the restrictions imposed on such government property.

At the conclusion of the project or when the property is no longer necessary for the project, the Principal Investigator or department or unit must notify the Cutler Institute Director that the equipment is available for further agency utilization. If the federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the federal-awarding agency has statutory authority to dispose of the property by alternative methods. Appropriate disposition instructions shall then be issued to the University by the federal-awarding agency.

b. Exempt Federal Property [OMB A-110, §33(b)]

A federal agency may, with proper statutory authority, designate assets purchased with federal funds “exempt property.” Such a designation allows title to the property to vest in the University, but may still subject the University to compliance with conditions established by the federal agency with respect to the use and disposition of the property. If, however, the agency places no restrictions on the equipment, the University obtains title without further obligations to the federal government with respect to it.

c. University-Vested Equipment (OMB A-110, §34)

Generally, if equipment is purchased with federal funds but not designated as federally owned property under an award agreement, title will vest in the University. The Federal Government, however, retains an interest in, and therefore restricts the use and disposition of, this equipment. The University is precluded from encumbering the equipment without the prior authorization of the federal awarding agency. [§34(a)-(c)]

When the equipment is no longer needed for the original project, the University shall use it in connection with its other federally-sponsored activities. Priority is given first to activities funded by the awarding agency that sponsored the original project and then to activities sponsored by other federal agencies. [§34(c)] For equipment with a current per unit fair market value of \$5,000 or more, the University may retain the equipment for other uses, provided that compensation is made to the original awarding agency.

Compensation is to be calculated by applying the percentage of federal participation in the cost of the original project to the current fair market value of the equipment. [§34(g)]

If it becomes necessary to replace the original equipment, the University may, with the approval of the awarding agency, use the equipment to be replaced as a trade-in or use the proceeds from its sale to offset the costs of the new equipment. If authorized to sell the equipment, whether to use the proceeds for the purchase of replacement equipment or for other purposes, the University is required to utilize sales procedures that ensure competition and result in the highest possible return. [§34(e), (f)(6)]

The Principal Investigator or unit should contact the Cutler Institute if there is to be any change in the status of the equipment purchased with federal funds.

3. Agency Implementation of Federal Equipment Disposition Guidelines

a. U.S. Public Health Service (PHS)

Unless otherwise specified in the grant document, PHS considers equipment purchased under grants for basic or applied research to be exempt. PHS does retain the right to transfer title to items of equipment having a unit acquisition cost of \$1,000 or more and to require submission of a final inventory that lists all equipment acquired with HHS funds. This exemption does not apply to other equipment purchased under other types of grants (i.e., training grants). Non-exempt equipment is subject to almost identical disposition requirements as stated in Section 34 of OMB Circular A-110. (*PHS Grants Policy Handbook and 45 CFR Part 74*)

b. National Science Foundation (NSF)

Unless otherwise specified in the grant document, NSF considers equipment purchased or fabricated with NSF funds exempt and subject to few disposition restrictions as stated in *NSF Policy Manual Section 543*. Specifically, the equipment must remain in use for the specific project for which it was obtained in accordance with Section 34(c) of OMB Circular A-110. In addition, NSF may identify items of equipment having a unit acquisition cost of \$5,000 or more where NSF reserves the right to transfer the title to the federal government or a third party; in these cases, disposition instructions will be issued no later than 120 calendar days after the expiration of the NSF-supported project.

c. Department of Defense (DoD)

The *DoD Grant and Agreement Regulations* state that DoD components should, when statutory authority exists, consider equipment purchased with DoD funds exempt. The *Regulations* do state that the DoD component may

establish conditions for vesting title to exempt property. (*32 CFR Part 32*). Each DoD granting agency has currently established its own disposition guidance:

1. Unless specified otherwise in the grant document, the U.S. Army Research Office (ARO) vests title to equipment purchased under grant funds upon acquisition to the grantee subject to the provisions of OMB Circular-110, however, ARO does not specify whether it considers equipment exempt. (*ARO General Terms and Conditions for Grant Awards to Educational Institutions*)
2. The Office of Naval Research vests title without further obligation to the government unless otherwise stated in the grant document. (*ONR Guide to Programs 1996*)
3. The Air Force Office of Scientific Research simply states that title to equipment shall vest in the grantee, but does not specify whether equipment is considered exempt. (*AFOSR Terms and Conditions, January 1997*)

d. Department of Energy (DOE)

DOE regulations permit the vesting of title to equipment without further obligation under a grant or cooperative agreement for basic or applied research in a non-profit institution of higher education. DOE program regulations or the terms and conditions of award may establish provisions for vesting title to exempt property. Should such conditions not be established and the recipient has no need for the equipment, the recipient shall request disposition instructions from DOE. If DOE does not issue disposition instructions within 120 calendar days of receipt of the request or receipt of the final inventory, title to the property shall vest in the recipient without further obligation to the government. (*10 CFR Part 600.133*) Equipment not considered to be exempt is subject to provisions of *10 CFR Part 600.134* (which are essentially identical to OMB Circular A-110, Section 34.)

e. National Aeronautics and Space Administration (NASA)

Special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the grantee) acquired by the grantee under a grant or cooperative agreement for the purpose of research shall be titled to the grantee as “exempt” without further obligation to NASA, including reporting of the equipment, in accordance with §1260.133(b) (*NASA Grant and Cooperative Agreement Regulations, October 2000*) (NASA Grant Conditions October 2000)

f. Department of Education

The Department of Education has implemented A-110 verbatim. Unless specifically noted on the grant document, equipment purchased from Department of Education funds should be considered non-exempt and subject to the disposition requirements of A-110. (*Education Department General Administrative Regulations, January 1997*)

4. Equipment Disposition under the Federal Procurement Regulations (Federal Contracts)

- a. Equipment purchased under a federal contract for research is generally governed by Federal Acquisition Regulations (FAR) 52.245-5, Alternate II (June 2007) [*Title under Cost- Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.*], which allows title to government property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 to vest in the University upon acquisition or as soon thereafter as feasible (provided that the Contractor obtained the Contracting Officer’s approval before each acquisition). Title to property purchased with funds available for research and having an acquisition cost of \$5,000 or more shall vest as set forth as described in the controlling contract. For equipment vested with the University, there are no disposition requirements. For all other equipment purchased under contract funds and for government-furnished property, disposition instructions must be obtained from the Contracting Officer. Failure to do so may be considered a breach of the contract.
- b. Equipment acquired as a direct cost under a research contract with the Department of Energy is governed by Department of Energy Acquisition Regulation (DEAR), which implements and supplements the FAR. In contrast to FAR 52.245-5, Alternate II, DEAR 970.5245-1 – Property does not allow such property, which is considered “government property,” to vest in the University. The University shall make such disposition of this government property as the contracting officer may direct during the progress of the work or upon completion or termination of the contract.

5. Transfer of Equipment Between University Units

- a. The University permits the sale or transfer of equipment to which the University has title from one unit to another University unit. Such transactions should not, however, be undertaken without notification of the University Property Management Office, (<http://usm.maine.edu/property-management>). Provided that the transfer and use of equipment is not limited by the provisions of the research agreement or by federal guidelines and regulations for equipment used in research, units may determine the terms of the sale or exchange of the property.
- b. If equipment is purchased with funds from a federal grant or contract, but is not designated “federally-owned property” in the agreement, the sale or exchange of the equipment between units of the University remains subject to restrictions specified by the sponsoring agency in the agreement. The agency which originally funded the purchase or fabrication of the equipment in question may, for example, allow the transfer of the equipment between units, but require that it be used to support research projects funded by the agency or used for other federally-funded research efforts within the transferee unit. Units contemplating a transfer of federally funded equipment should contact the Cutler Institute, which will work with the unit(s) to obtain written authorization for the proposed transfer from the sponsor.

6. Transfer of Equipment Between USM and Another Academic Institution

- a. The University will not sell or otherwise transfer equipment to which it does not have legal title without the express authorization of the owner of the equipment. Transfer of University equipment to for-profit entities or nonprofit entities not eligible to receive federal property is not permitted.
- b. In the event that a faculty member has obtained an appointment at another institution and wishes to transfer equipment used in his or her research to that institution, the Provost and Cutler Institute Director will determine whether a transfer is feasible, under the provisions of the applicable active or closed grant or contract, and equitable, given institutional investments in and demand by other University faculty for the equipment.
- c. If an active grant is being transferred to another academic institution, equipment purchased on that grant during the active grant segment, may be transferred to the new institution in accordance with the terms and conditions of the grant. Should the University choose to retain the active grant, under either Co-Principal Investigators remaining at the University or a new Principal Investigator, equipment necessary to successfully conduct the research project in question will also be retained.
- d. Equipment funded by a grant which is no longer active will be released only if the department chair or unit director certifies that the equipment is not needed by other investigators to conduct research at the University. Equipment purchased in whole or in part with University funds must remain at the University, unless the department Chair or unit Director verifies that it is not necessary for active or proposed research projects. If the University determines that equipment is not essential for the research efforts of its faculty, it may be transferred to the faculty member’s new institution, which may be asked to pay a fair market value for the equipment.
- e. In all cases, the requirements of the granting or contracting agency concerning the transfer of equipment will supersede University policy.