Federal Interest in Real Property

American Rescue Plan Act (ARPA) State & Local Fiscal Recovery Funds (SLFRF)

July 2024

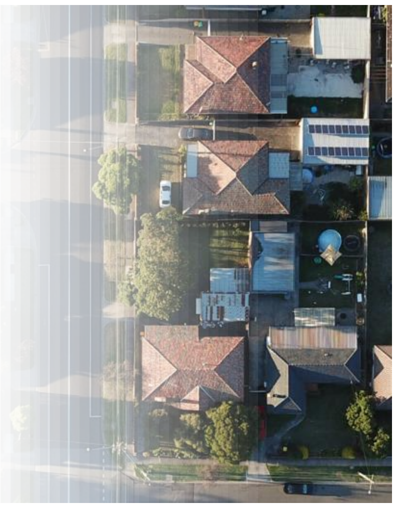
Per the Grant Agreement, subrecipients are responsible for ensuring compliance all applicable State and Federal laws and regulations when utilizing ARPA SLFRF funds. This document is a guide to direct subrecipients to relevant State and Federal requirements. This guide is not exhaustive and a subrecipient should consult with its counsel, current materials published by the United States Department of the Treasury, and any other laws, rules, and regulations applicable to federal assistance, to ensure its compliance.

Federal Interest in Real Property for ARPA SLFRF

What is Real Property? *(2 CFR 200.1)*

Real property is land, including land improvements, structures and their permanent attachments and components (e.g., utilities), but **<u>not</u>** movable machinery and equipment. **In practice**, this means land and buildings, as well as other permanent fixtures on the property.

Example: *If an individual were to buy land with a house, the land, house, and all fixed appliances, pipes, and wiring within the house would be part of the real property. Improvements to real property are permanent fixtures like structures and their components. If an individual were to install new wiring or pipes, that would be an improvement to the real property. Other examples of improvements include building a shed or a swimming pool, installing a new heating system, or placing telephone poles.*



What is Federal Interest? *(2 CFR 200.1)*

Federal interest means, for purposes of § 200.330 or when used in connection with the improvement of real property, equipment, or supplies under a federal award, the dollar amount that is the product of:

1) The percentage of federal participation in the total cost of the real property, equipment, or supplies; and,

2) The current fair market value of the property, improvements, or both, to the extent that the costs of acquiring or improving the property were included in the award.

Example: *If a property is purchased for $500,000 using a Federal contribution of $250,000 (50% of the purchase price), and the fair market value of that property rises from $500,000 to $1,000,000, the Federal interest will be $500,000 (the same* ***percentage*** *as the acquisition contribution).*

When Does Federal Interest Apply?

Federal Interest <u>Does</u> Apply To: Expenditures of grant funds made by recipients to purchase or improve real property, and expenditures of grant funds by subrecipients to purchase or improve real property.

Federal Interest <u>Does Not</u> Apply To: Expenditures of loan proceeds by any entity, or any expenditures of federal financial assistance by beneficiaries to purchase real property.

What This Means for Reporting and Recordkeeping:

For Reporting *(2 CFR 200.330)*

- If federal interest lasts less than 15 years, entities must submit reports at least annually on the status of real property in which the federal government retains an interest.
    - *Non-profit beneficiaries are not required to report on Federal Interest, but records should be retained showing amount disbursed to non-profit beneficiaries*
- If the federal interest extends 15 years or longer, the awarding agency or pass-through entity (GMO) may require the entity to report at multi-year frequencies.
- This applies indefinitely beyond the period of performance until the property is disposed.

For Record Keeping *(2 CFR 200.334)*

- Typically, records for real property acquired with federal funds must be retained for 3 years after final disposition. The state of Oklahoma requires subrecipients to retain documents for **7** years, so all records should be retained for 7 years.
- Federal agency or pass through may require a notice of federal interest to be filed with the registry of deeds. Currently, Treasury does **not** require such a notice.

Federal Interest in Real Property for ARPA SLFRF

How Does Federal Interest Impact Property Ownership?

If real property is acquired with federal funds, **ownership vests with the entity upon acquisition**. *(2 CFR 200.311(a))*

The entity is the owner of record and holds the title to the property. The federal awarding agency or pass through entity is **NOT** on the deed.

This means the federal government ***cannot***:

- Enter the property without permission (or other legal authority, like a warrant).
- Take possession of the property without the owner's permission.
- Completely prevent the owner from discharging the federal interest and changing how the property is used.
- Prevent the owner from discharging the federal interest and disposing of the property.
- Prevent the owner from making changes to the property that do not inhibit its approved use.

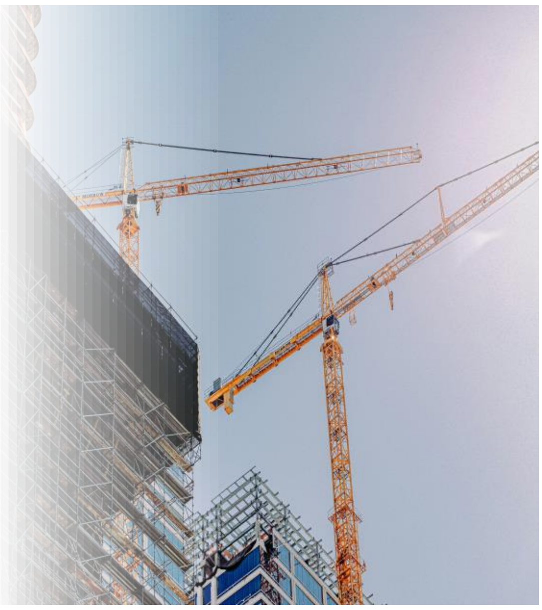
How Does Federal Interest Impact Property Use? *(2 CFR 200.311(b))*

The property must

- Be used for its original authorized purpose, unless otherwise permitted by the awarding agency.
    - For SLFRF, Treasury has substantially relaxed this rule (FAQ 13.16).
- Be insured **at least to the same extent** as the owner's other property (i.e. property should not be under-insured due to its federal interest).

The property cannot

- Be **encumbered** without permission from the federal awarding agency.
    - Encumbrances include mortgages, liens, and easements.



How Does Federal Interest Impact Property Disposition? *(2 CFR 200.311(c))*

Before disposing of the property, you must request disposition instructions from the federal awarding agency (Treasury). Those instructions must allow for one of the following alternatives:

Keep the property and compensate the federal awarding agency. The amount due is calculated by applying the awarding agency's percentage of participation in the cost of the original purchase (and any improvements) to the fair market value of the property.

Sell the property and compensate the federal awarding agency. The amount due is calculated by applying the percentage of federal interest to the proceeds of the sale after deduction of any actual and reasonable selling and repair expenses. Sale must be competitive and must result in highest possible return.

Transfer title to the federal awarding agency or an approved 3rd party entity. Owner is entitled to be paid an amount calculated by applying entity's percentage of participation in the original purchase (and any improvements) to the FMV of the property.

Federal Interest in Real Property for ARPA SLFRF

What are the reporting obligations for real property?

Reporting on Real Property (2 CFR 200.330)

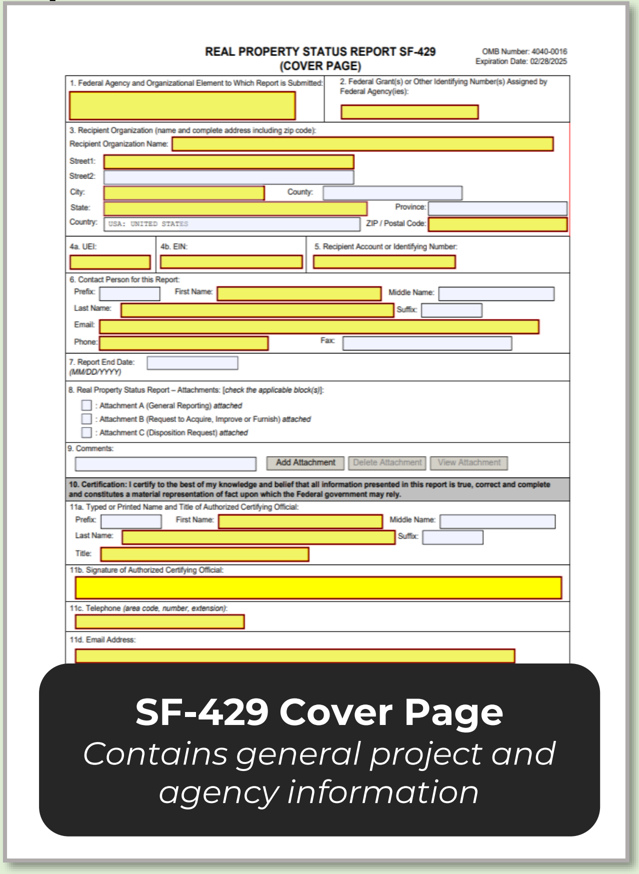
- Entities must submit reports at least annually on the status of real property in which the federal government retains an interest.
- If the federal interest extends 15 years or longer, the awarding agency or pass-through entity (OMES) may require the entity to report at multi-year frequencies.
- This applies indefinitely beyond the period of performance, until property disposition.

Reporting Requirements for Real Property:

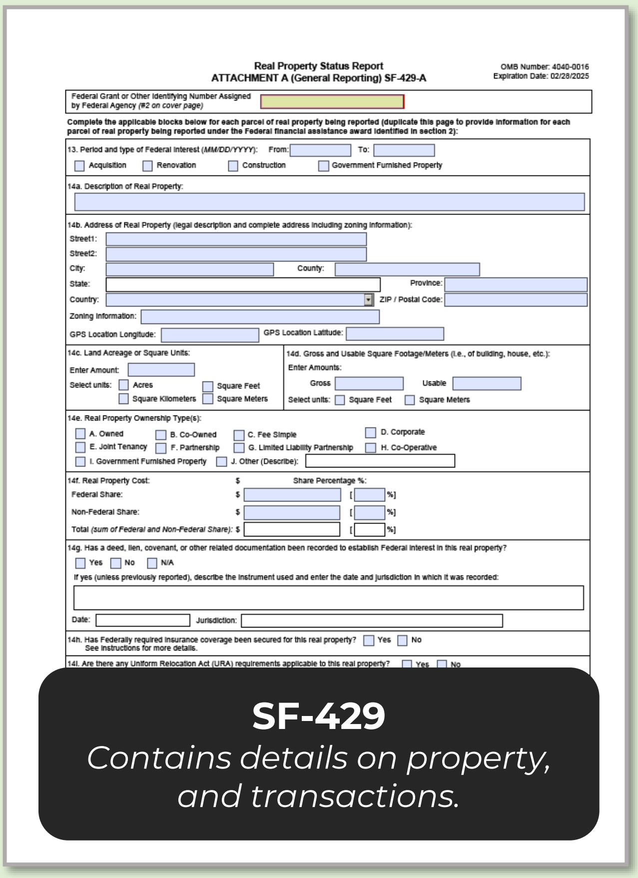
For projects with federal interest lasting under 15 years, reporting is required **annually**.

Reporting Frequency: Projects with federal interest extending beyond 15 years may be reported in larger increments, no longer than **5** years. These larger reporting increments may begin immediately.

Required Forms:



SF-429 Cover Page
Contains general project and agency information

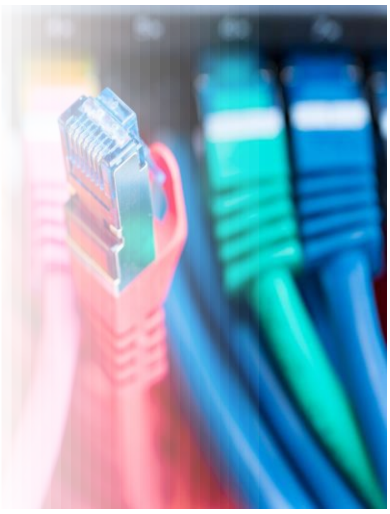


SF-429
Contains details on property, and transactions.

Guidance and References	
SF-429 Instructions (for annual real property reporting)	Link
SF-429 Cover Page (for annual real property reporting)	Link
SF-429 (General Reporting) (for annual real property reporting)	Link
Property Title	2 CFR 200.311(a)
Property Use	2 CFR 200.311(b)
Property Disposition	2 CFR 200.311(c)
Property Insurance	2 CFR 200.310
Property Trust	2 CFR 200.316
Improvement to Property	2 CFR 1.856.10

Federal Interest in ARPA SLFRF for Broadband

What is Federal Interest? (2 CFR 200.1)



Guidance for **Federal Interest** as it relates to **Broadband** projects varies based on whether the entity receiving funds is classified as a **subrecipient** or as a **contractor.**

Treasury leaves it to **recipients** to make the distinction between **subrecipient** or **contractor**.

Identifying Subrecipients vs Contractors (2 CFR 200.331)

	Subrecipients	Contractors
Overview	**Subrecipients** are entities who have programmatic decision-making responsibility, have their performance measured against Federal objectives, determines who is eligible to receive federal assistance, and uses federal funds to carry out a program for a public purpose. Additionally, subrecipients are legally responsible for ensuring projects adhere to Federal regulations and standards.	**Contractors** provide goods or services as part of their normal business operations. Contractors generally operate in the competitive open market and may supply their goods or services to many customers. Contractors are not required to comply with Federal program requirements but may be bound by other project or agency specific clauses.
Uniform Guidance Requirements	**Subrecipients** must follow the provisions of the Uniform Guidance relating to subrecipients,.	**Contractors** must follow the provisions of the Uniform guidance relating to contractors. This includes procurement rules in the selection of contractors and the imposition of the applicable terms provided in Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, of the Uniform Guidance.
Ownership of Program Income	**Subrecipients:** Income generated by Internet Service Providers (ISPs) from subawards will not be considered program income and ISPs may use such income without restriction.	**Contractors:** So long as the state and contractor enter into an agreement certifying their compliance with applicable procurement requirements, income earned by contractors is not considered program income and may be used by the contractor without restriction.

Broadband Infrastructure Ownership: The title to real property acquired or improved with federal funds vests with the ISP, on conditions that stipulated requirements are met.

These requirements include guidance on the physical property itself, such as property use, disposition, transfer of ownership. Treasury also establishes requirements for the continued offering of service, and expectations around the speeds to be offered.

A full list of Treasury's requirements can be found in the May 2023 SLFRF and CPF Supplementary Broadband Guidance. Please note that guidance may vary depending on award type (fixed / non-fixed)

Per the Grant Agreement, subrecipients are responsible for ensuring compliance all applicable State and Federal laws and regulations when utilizing ARPA SLFRF funds. This document is a guide to direct subrecipients to relevant State and Federal requirements. This guide is not exhaustive and a subrecipient should consult with its counsel, current materials published by the United States Department of the Treasury, and any other laws, rules, and regulations applicable to federal assistance, to ensure its compliance.

Identifying Real Property & Property Improvements

What is Real Property?

Real property *is land, including land improvements, structures and their permanent attachments and components (e.g., utilities), but* ***<u>not</u>*** *movable machinery and equipment. (2 CFR 200.1)*

When determining whether something is real property, or an improvement to real property, factors to consider are:

Is it designed to be moved? If an item is designed to be moved, it is not considered real property. Items that fixed in place are usually real property.

What damage would removal cause? If removing an item would cause damage to the structure, that item is considered to be real property. Items which can be removed without causing damage, are not real property.

Will it remain in place indefinitely, even when the property changes hands? Items that will remain in place when a property changes hands, for example a water heater, or air conditioner, are considered real property.
Items that are removed upon the transfer of the property (without causing damage) would not be considered real property. An example of this may be portable machinery, which can be picked up and moved.

Does it serve a utility-like function for the property? Items such as generators, which provide a service in place of a traditional utility may be considered to be real property.

Does it passively serve an inherently permanent structure? If the item in practice serves as a permanent structure (such as a semi-permanent awning) it can be considered real property.

Was it installed during construction of an inherently permanent structure? Items that were installed during the construction of a permanent structure, such as lighting in a warehouse is considered real property.

OKLAHOMA
OMES Grants Management Office

Per the Grant Agreement, subrecipients are responsible for ensuring compliance all applicable State and Federal laws and regulations when utilizing ARPA SLFRF funds. This document is a guide to direct subrecipients to relevant State and Federal requirements. This guide is not exhaustive and a subrecipient should consult with its counsel, current materials published by the United States Department of the Treasury, and any other laws, rules, and regulations applicable to federal assistance, to ensure its compliance.