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Strategies

Monitoring

Accountability

Risk Mitigation

Transparency

Real Property, Leases, and Property Management SMART 4.0

Hosted by the Office of Grants Management
Division of Compliance Assistance and Policy
Employment and Training Administration
U.S. Department of Labor.

SMART 4.0 Training Series

- The training modules are focused on: **S**trategies for sound grant management that includes **M**onitoring, **A**ccountability, **R**isk mitigation and **T**ransparency.
- **4.0 focuses on Risks Identification and SMART Practices!**

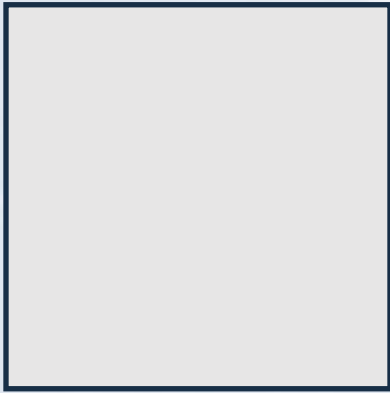


Disclaimer

SMART 4.0 is part of the catalog of SMART grant management tools. This conference and its materials should be viewed primarily as a support resource. It is not intended to be comprehensive but rather to provide an understanding of 2 CFR 200, 2 CFR 2900, and the management of ETA grants. The use of these SMART 4.0 modules does not ensure compliance. Any omission of an applicable Federal requirement does not waive a grant recipient or subrecipient's responsibility to comply with that requirement.

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Today's Speakers



First Last

Occupation/Title

Company Name



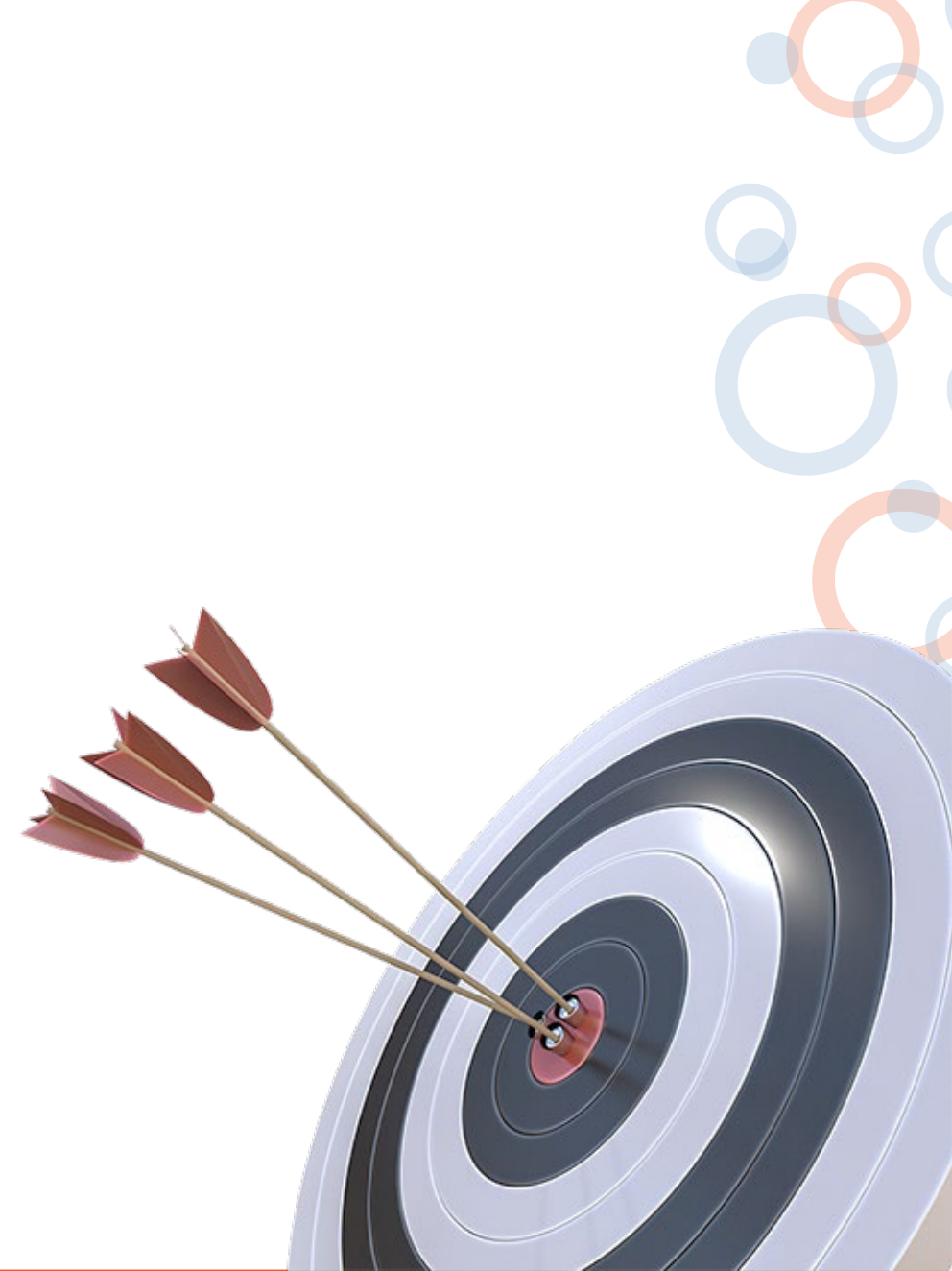
First Last

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Module Overview

- Real Property.
 - Definitions.
 - Types.
 - Leases.
 - Prior Approval.
- Management.
 - Use of Property.
 - Allowable and Unallowable Costs.
 - Depreciation and Amortization.
 - Disposition.
- Risks and SMART Practices.



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Real Property

Definitions

Real Property, Facilities

[2 CFR 200.1](#) [2 CFR 200.446\(a\)\(1\)](#) and [2 CFR 200.446](#)

- **Real Property** means land, including land improvements, structures (buildings) and appurtenances thereto.
- **Facilities** means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether **owned or leased** by the grant recipient.

Idle Facility and Idle Capacity

- **Idle facilities** - completely unused facilities in excess to current needs.
- **Idle capacity** - the unused capacity of partially used facilities. It is the difference between:
 - (i) That which a facility could achieve under 100% operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;
 - (ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

Capital Assets & Expenditures

2 CFR 200.1

■ **Capital assets includes lands and buildings plus:**

- Any capital expenditures on additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that **materially increase their value or useful life.**

■ Per GAAP, capitalization threshold is \$5,000.

■ For buildings and land:

- For improvements to land or buildings that materially increase their value or useful life.
 - › Capital improvements ([2 CFR 200.439\(a\)\(3\)](#)).

Types

Types of Real Property

1. Recipient entity-owned.
2. Real property with Federal equity.
3. Donated property.
4. Leased properties.



PROPERTY TYPE

Recipient-Owned Property

- These are properties acquired prior to the issuance of the award.
- Used to run ETA programs.
- Costs are based on actual costs incurred.
- Recipient cannot charge mortgage on the grant.
- No use allowance charges allowable.

Real Property with Federal (DOL) Equity

TEGL 07-04

- Federal equity is the Federal government's interest in a piece of non-Federal real property resulting from the use of grant funds by the grant recipient/owner of legal title to acquire the property.
- A "Federal interest" means the dollar amount that is the product of the: (a) Federal share of total project costs; and (b) current fair market value of the property or improvements.
- Title is not the same as equity.

Real Property With Federal (DOL) Equity (2)

20 CFR 683.240

- State Workforce Agency (SWA) Buildings.
 - **Federal Equity** - Real property containing Federal equity transferred pursuant to WIOA Section 192(a) (29 USC 3252(a)) to carry out activities authorized under WIOA, SSA Title III, or the W-P Act;
 - **Reed Act Equity** - Real property containing Reed Act equity is no longer needed for UI or W-P Act program purposes.

Real Property With Federal (DOL) Equity (3)

[20 CFR 683.240](#)

- SWA Buildings and Other Buildings.
 - **Federal Equity** – Real Property purchased with Workforce Investment Act/Job Training Partnership Act (JTPA), WIOA or DOL Equity property.
 - › Required Secretary's Approval.

Donated Real Property

[2 CFR 200.306](#), [2 CFR 200.306\(g\)](#) and [2 CFR 200.434\(g\)](#)

- All valuation is based on the fair market value at the time of the donation.
- Value of donated space must not exceed fair rental value of:
 - Comparable space and facilities.
 - In a privately-owned building.
 - In the same locality.
- The valuation of the donated space must be assessed again each subsequent year.
- Donated property excludes land value.

Leased Properties

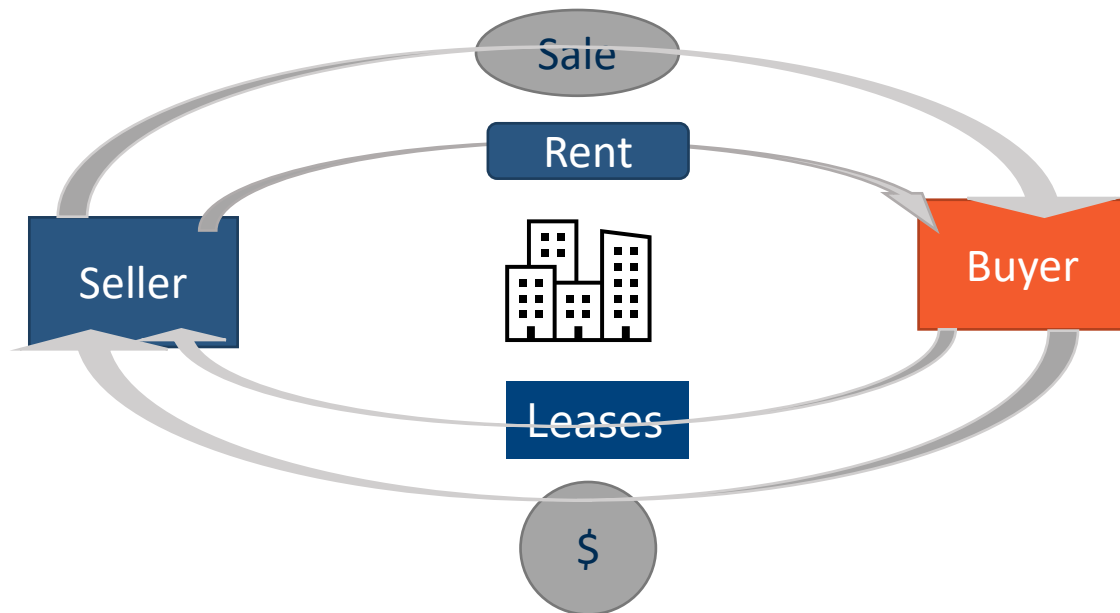
2 CFR 200.465

- Rental costs under leases are allowable.
 - To the extent reasonable.
 - › Rental costs of comparable property, if any;
 - › Market conditions in the area;
 - › Alternatives available;
 - › Type, life expectancy, condition, and value of the property leased.
 - With certain limitations.
- Rental arrangements should be reviewed periodically.

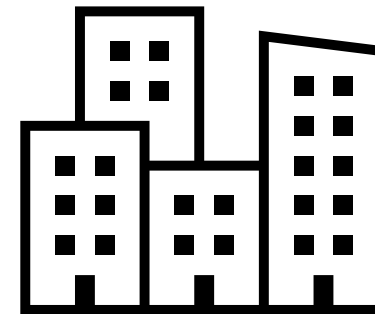
Leases

Lease Arrangements Categories

- **Sale and leaseback:** An arrangement where a grant recipient sells a property it owns and enters into a lease agreement to rent the property back from the new owner.



- **Less-than-arm's-length:** An arrangement where one party is able to control or substantially influence the actions of the other.



Type of Leases – Capital vs. Operating

- Usually, a non-cancellable lease for a fixed term with an option to buy.
- Lessors' services are limited to financing the asset.
- Lessee pays all other costs (insurance, maintenance, and taxes).
- Title remains with the lessor.
- Lease payments are capitalized and recorded as fixed assets with depreciation and interest expense recognized on the income statement.
 - Cost to ETA programs is limited to depreciation and third-party financing costs or limit interest to the least expensive alternative.
- Lessor (or owner) transfers only the right to use the property to the lessee.
- Lessee returns the property to the lessor at the end of the lease period.
- Lease does not have ownership over the property.
- Lease generally provides for early termination fees.
- Lessee treats the lease expense as an expense to the grant.

Essential Elements of a Lease Contract

- **Purpose:** Should be legal and authorized, and contract performance must occur during an authorized period of time.
- **Offer:** From seller to buyer.
- **Acceptance:** An unconditional agreement with the terms of the offer.
- **Consideration:** Outlines rights and responsibilities.
- **Authorized official's signature:** Persons authorized to enter into and sign legally binding agreements and must be on record as the signatory official.
- **Early Out Clause:** Lack of funding or funding tied to grant life or appropriation.

Essential Elements of a Lease Contract – Termination Clause

[2 CFR 200.472\(d\)](#)

- Unexpired lease costs are generally allowable where reasonably necessary for award performance, less residual value, if:
 - Amount claimed does not exceed reasonable use value for the award and further reasonable period.
 - All efforts were made to terminate, assign, settle, or otherwise reduce the lease costs.
- Termination costs that are deemed unreasonable or excessive are unallowable [\(2 CFR 200.404\)](#).

Lease - Documentation

- Lease or rental agreements for space used by Federal programs.
- Allocation methodology and floor plan for sharing in space and building related expenses.
- Procurement process to ensure that rental or lease rates are fair and reasonable.
- Board approval.

Leases – Common Mistakes

- Charging excess rent or space to programs.
- Charging fair market rental rates for fully amortized grantee owned buildings.
- Charging use allowances.
- Using an allocation method to share space costs unevenly or unfairly to DOL programs.

Check Your Knowledge in 60 Seconds

Answer True or False:

1. A capital lease is the most common form of lease and is used by most organizations to rent space.
2. When a grant is terminated early, rental costs under unexpired leases may be allowable charges to the Federal award.
3. If a building is sold and then leased back for program occupancy, the current fair market rate may be charged to DOL grant activities.



Prior Approval

Real Property – Prior Approval (1)

- Real property:
 - Construction, major renovations, and **purchases** (acquisitions) are not allowable costs to most ETA grants.
 - Exceptions:
 - › When explicitly authorized by program statutes and regulations such as:
 - YouthBuild.
 - Migrant Seasonal and Farmworkers Program.
 - National Dislocated Worker Grants for disaster relief.
 - Follow ETA's prior approval process.
- Facilities (idle) are unallowable with exceptions.

Real Property – Prior Approval (2)

Capital Expenditures – Requires Prior Approval from Grant Officer.

- When approved as a direct charge:
 - Capital expenditures will be charged in the period in which the expenditure is incurred.
- Normally not allowed.
 - › Seek out advice from FPO or Grant Officer.

Capital expenditures exclude improvements made for accessibility, i.e., rearrangements, reinstallations, and alterations.

Real Property – Prior approval (3)

- [TEGL 5-10](#) and [20 CFR 685.360\(c \)\(ii\)](#)
- Construction costs are generally not allowable costs to ETA-funded grants.
- For Migrant and Seasonal Farmworkers, National Farmworker Jobs Program grant recipients may use grant funds on capital improvement and construction projects tied to housing.
 - May use funds for acquiring rental units, duplexes, single homes, multi-family structures, dormitories, group homes, etc.
- The YouthBuild program may use grant funds for acquisition, rehabilitation, and construction of property.
 - May not use grant funds for inspection, titles, broker fees, or land acquisition.

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Management

Use of Property

Property Use and Title

Use – [2 CFR 200.311\(b\)](#)

- For the originally authorized purpose as long as needed for that purpose.
- Grant recipient must not dispose of or encumber its title or other interests.

Title – [2 CFR 200.312\(a\)](#)

- To real property **acquired or improved** under a Federal award will vest upon acquisition in the **grant recipient**.
- Title to Federally-owned property remains vested in the Federal government.

Conditions for Use – YouthBuild & MSFW

[20 CFR 688.730](#) YouthBuild program only.

- Ability to buy real property to conduct YouthBuild activities and serves as residential units.
- Maintain a 90 percent or more level of occupancy for low-income families.
- Residents with income are limited to not more than two years.

[20 CFR 685.360](#) NFJP recipients only.

- Certification of occupancy is required to be posted at the site prior to being occupied by any migrant agricultural worker.

Restrictive Covenant – YouthBuild Only

[TEGL 06-15](#) and [20 CFR 688.730](#)

- Owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property.
- A restrictive covenant in place that only allows for rental or re-sale to low-income participants for a particular period.
- The term of the covenant is at least five years.
- Covenant must inform buyers that all housing units constructed or rehabilitated using YouthBuild funds are subject to the clause.

Allowable and Unallowable Costs

Rent and Interest

Rent:

- Rental costs are made under sale and leaseback agreements are allowable only up to the amount that would be allowed had the grant recipient continued to own property.
- This amount would include expenses such as depreciation (if applicable), maintenance, taxes, and insurance ([2 CFR 200.465\(b\)](#)).

Interest:

[2 CFR 200.449\(a\)](#)

- Costs incurred for interest on capital, temporary use of endowment funds, or the use of the grant recipient's own funds, however represented, are **UNALLOWABLE**.
- Financing costs (including interest) to acquire, construct, or replace assets are allowable, under very limited circumstances, except ETA does not allow the acquisition or construction of buildings.

Maintenance, Repair, and Insurance

[2 CFR 200.452](#)

Maintenance and repair costs do not need prior approval.

- Costs incurred for necessary maintenance, janitorial services, repair, or upkeep of buildings.
- Neither add to the permanent value of the property nor appreciably prolong its intended life.
- Cost for utilities, insurance, and security are allowable.
 - Only allowable to the extent not paid through rental or other agreements.
 - Allocate based on the cost allocation plan.

Capital Improvements, Rearrangement/ Reconversion costs

- **Capital improvements** must be treated as capital expenditures.
- Costs are recovered through depreciation charges, or as a direct charge to the period incurred where prior approved by DOL.

[2 CFR 200.462\(a\)](#) and [2 CFR 200.462\(b\)](#)

Rearrangements and reconversion.

- Ordinary and normal rearrangement and alteration costs are allowable as indirect costs.
- Special arrangements/alterations incurred specifically for a Federal award are allowable as a direct cost with PRIOR WRITTEN APPROVAL.
- Costs for restoration or rehabilitation of facilities after use by ETA programs, less normal wear-and-tear, are allowable.

Idle Facilities and Idle Capacity

[2 CFR 200.446\(b\)](#) and [2 CFR 200.446\(c\)](#)

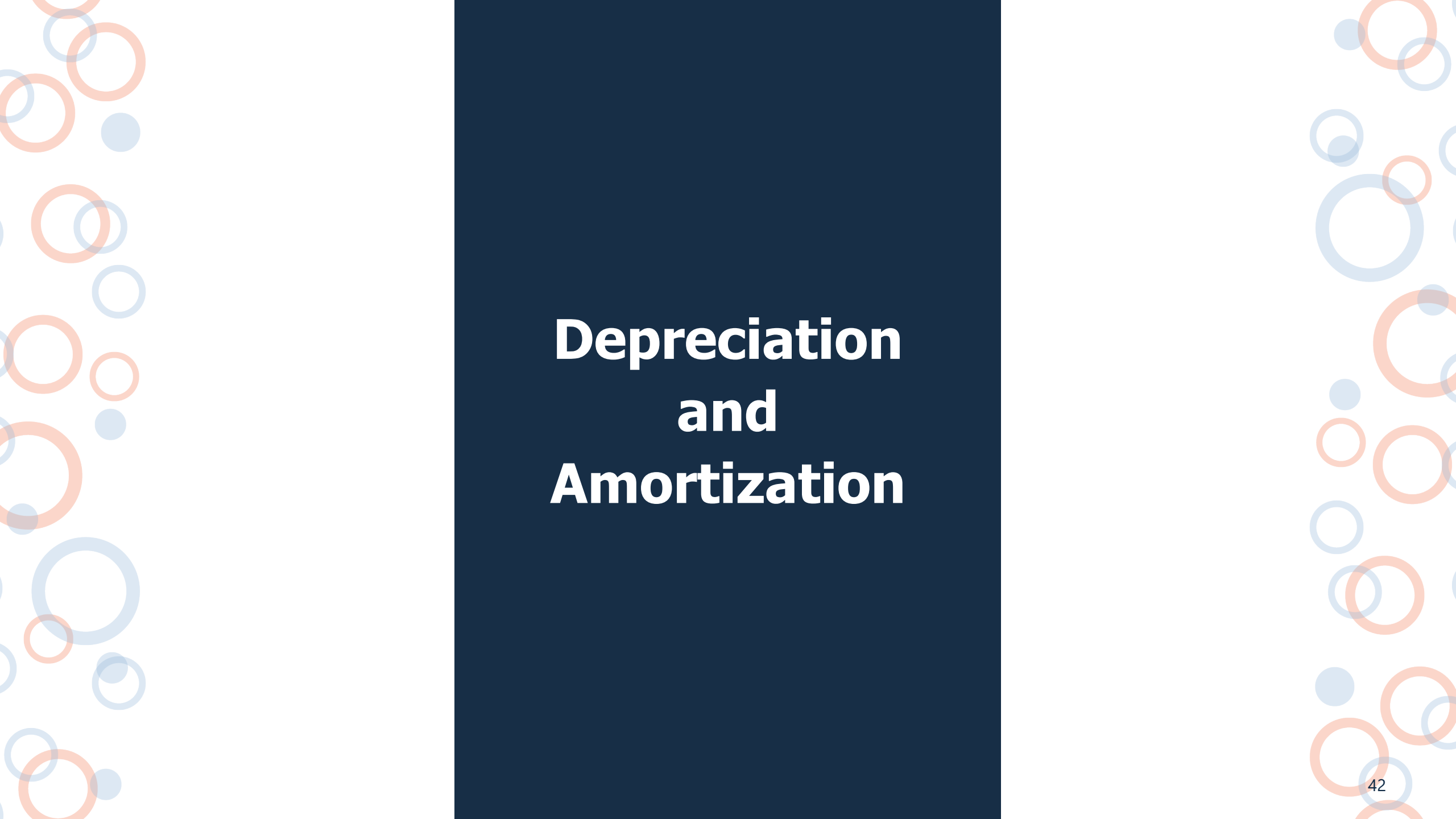
- Allowable with provisions.
 - Capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or capacity was originally reasonable.
- Costs are unallowable except when:
 - They are necessary to meet fluctuations in workload.
 - Although not necessary to meet fluctuations in workload, they were necessary when acquired.
 - › Idle because of changes in program requirements and other reasons.
 - › Under reasonable exceptions stated in this requirement, costs are allowable for a reasonable period.
 - Up to one year depending on initiative to use, lease, or dispose of such facilities.

Check Your Knowledge in 60 Seconds

Answer True or False:

1. The cost of idle facilities is an unallowable cost to Federal awards except under limited circumstances.
2. Capital improvement projects are allowable as direct charges to the Federal programs as long as they are approved by the director of the organization, and they are properly justified.





Depreciation and Amortization

Depreciation – Definition

2 CFR 200.436(a)

Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use.

- The grant recipient may be compensated for the use of its buildings and capital improvements provided that they are used and needed in the recipient's activities and properly allocated to Federal awards.
 - Such compensation must be made by computing **depreciation**.

Depreciation – Standards

2 CFR 200.436(e)

- Costs must be supported by adequate property records, and physical inventories are taken at least once every two years.
 - Maintain records showing the amount of depreciation.

2 CFR 200.436(d)(4)

- No depreciation may be allowed on any assets that have outlived their useful lives.
 - Use allowance is no longer allowed.
 - May charge repair and maintenance costs.
- A SWA cannot charge depreciation for the portion of the facility that was funded or amortized in whole or in part with UI or W-P grant funds.
- Land cannot be depreciated.

Depreciation Costs – Calculation

- Use for the property (building) does not include the cost of the land.
- Useful life period must consider the type of construction, historical data, and entities' property renewal and replacement policies.
- Must use straight-line depreciation.
 - Absent clear evidence indicating property's consumption is greater earlier than later in its useful life.
 - Changes in depreciation methods requires prior approval.
- 2 CFR [200.436\(d\)\(3\)](#): Two options methods: (1) treated as a single asset; depreciated over single useful life or divided into multiple components; and (2) each component depreciated over its estimated useful life.

Amortization of Real Property

- Allowable for all buildings except buildings with Federal equity.
- Example:
 - Paying off installments on a capital improvement project.

TEGL 03-19

- States may not use funds awarded under WIA, WIOA, SSA Title III, or the Wagner-Peyser Act to amortize the costs of real property that was purchased by the State on or after February 15, 2007.
- Amortization of the capital improvement costs with WIOA, SSA Title III funds, or W-P Act funds **is not allowed**.

Disposition

Disposition – Real Property with Federal Equity

■ **Unemployment Insurance / Wagner-Peyser Federal Equity – SWA Building.**

- Requires disposition instructions from the Grant Officer.
- Proceeds from disposition is used to carry out the activities.

■ **Reed Act Equity – SWA Buildings.**

- State must request disposition instructions from the Grant Officer.
- In a replacement transaction involving a property with Reed Act equity, proceeds from the disposed of property (including profit) may be used as an offset to the cost of the replacement property.

■ **Federal Equity – Any WIOA, WIA, Job Training Partnership Act Building or SWA Buildings.**

- Grant recipient must seek instructions from the Grant Officer or State (in the case of a subrecipient) prior to disposition or sale. [20 CFR 683.240\(c\)](#).

Transfer of Equity (1)

- **Unemployment Insurance / Wagner-Peyser Federal Equity.** [TEGL 03-19](#) / [20 CFR 683.240\(a\)](#)
 - Equity transferred to the States that used the grants to acquire the equity.
 - Portion of proceeds attributable to transferred Federal equity must be used to carry out activities authorized under WIOA, Title III of the Social Security Act, or Wagner-Peyser Act ([20 CFR 683.240\(a\)](#)).
- **Reed Act Distributions – Reed Act Equity**
 - The portion of the proceeds attributable to the Reed Act equity must be returned to the State's account in the Unemployment Trust Fund and used in accordance with DOL-issued guidance. [20 CFR 683.240\(b\)](#)

Transfer of Equity (2)

■ WIOA /WIA/ Job Training Partnership Act. Federal Equity.

[20 CFR 683.240\(c\)](#)

- Real property purchased with WIA funds or transferred from JTPA to WIA is transferred to the WIOA Title I programs.
- Property must be used for WIOA purposes.

Check Your Knowledge in 60 Seconds

Answer True or False:

1. After a building has been fully depreciated, a grant recipient may begin charging the property a 2% use allowance.
2. Grant recipients may charge depreciation on capital improvements that are not fully depreciated.
3. If an entity owns a facility and uses it for program purposes, the entity can charge market rent to the Federal grant for use of the facility.





Risks and SMART Practices

Common Risks

1. Missing or unreasonable termination clauses.
2. Inadequate documentation to support ETA program's fair share of facilities cost.
3. Lack of accountability of properties on financial statements
4. Accelerated depreciation charged without justification.
5. Mortgage payments charged to awards.
6. Failure to obtain prior written approval for questionable capital improvement projects.
7. No lease or title or outdated lease and title.

SMART Checklist

- Develop or update policies to address operating and capital leases as well as the new requirements for use of idle or vacant space.
- Develop policies and procedures to determine whether or not rental costs for real property and equipment are reasonable.
- Where applicable, develop or update procedures to incorporate the requirements for the disposition of any facility or property containing Federal equity.

Any Questions?



Testing For Compliance – Core Monitoring Guide

ETA monitoring aims to assess compliance using the Core Monitoring Guide (CMG). Here is a list of indicators that were discussed during the module's topic.

■ **Objective 2.C: Property Management.**

- The grant recipient maintains a property management system in accordance with all prior approval requirements, terms and conditions of the award, and written programmatic policies and procedures.
 - › Indicator 2.c.1: Insurance Coverage.
 - › Indicator 2.c.2: Real Property.
 - › Indicator 2.c.4: Rental or Leasing Costs for Property.
- Also, consider utilizing the entire **Core Monitoring Guide** as a resource.

Real Property and Leases Resources

- [Core Monitoring Guide](#)
- Department of Labor Exceptions [2 CFR Part 2900](#)
- [ETA Advisories](#)
 - [TEGL No. 04-07](#)
 - [TEGL No. 03-19](#)
 - [TEGL No. 06-15](#)
- WIOA Provisions [20 CFR Part 683](#)
 - 20 CFR 683.240
 - 20 CFR 688.730
 - 20 CFR 688.550
- [Uniform Guidance Crosswalk](#)
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [2 CFR Part 200](#)
 - [2 CFR 200.1](#)
 - [2 CFR 200.310](#)
 - [2 CFR 200.436](#)
 - [2 CFR 200.439](#)
 - [2 CFR 200.446](#)
 - [2 CFR 200.449](#)
 - [2 CFR 200.452](#)
 - [2 CFR 200.465](#)
 - [2 CFR 200.469](#)

Thank You!