

FACT SHEET

Broadband Infrastructure Program

Infrastructure Assets and Federal Interest

This fact sheet provides general guidance on the sale, lease, transfer, disposition, mortgage, or other conveyance of an interest in assets funded under the Broadband Infrastructure Program (BIP) of the National Telecommunications and Information Administration (NTIA). This fact sheet is not a substitute for the terms and conditions of specific BIP awards, including the Notice of Funding Opportunity, the Department of Commerce Financial Assistance Standard Terms and Conditions, applicable federal regulations such as those found in Title 2, Part 200 of the Code of Federal Regulations (CFR), and any Special Award Conditions. Should this fact sheet and any BIP award terms conflict, the terms and conditions of a specific BIP award will apply.

Overview

It is the goal of NTIA for BIP-funded networks to remain in use for the purposes of the BIP award for their estimated useful life. NTIA recognizes that, in some cases, recipients or subrecipients may propose transactions that involve a change in the ownership of assets, including real property, equipment, and intangible property that are acquired or improved with a BIP award (BIP Assets), the lease of a substantial portion of BIP Assets, or the use of BIP Assets as collateral for a loan. For example,

- A recipient could propose to transfer all of its BIP Assets to an affiliated corporate entity for tax-related reasons, with little or no intended effect on the actual operation of the network.
- A recipient could propose to sell or lease all of its BIP Assets to another entity with greater organizational capacity to ensure that the BIP Assets are fully utilized.
- A recipient could propose to sell some BIP Assets to another entity because the recipient is in need of cash and those BIP Assets are not essential to the operation of the remaining network.
- A recipient could propose to replace BIP Assets with newer equipment.
- A recipient could propose to take out a loan against BIP Assets.

These and other scenarios require review from NTIA and the National Institute of Standards and Technology (NIST) Grants Officer to ensure that the federal interest in BIP Assets is adequately protected. This Fact Sheet describes the procedures to follow and the factors to consider when contemplating a lease, sale, transfer, or mortgage of BIP Assets. ***These instructions apply to assets purchased with BIP funds, cash matching funds, and real property or equipment contributed as an in-kind match.***

Applicable Terms and Conditions of the Award

Several different terms and conditions of the award restrict sales, leases, transfers, and mortgages of BIP Assets, including real property and equipment. These are discussed below.

Restrictions on Disposing of or Encumbering Title to Real Property and Equipment

Through 2 CFR § 1327.101, the Department of Commerce adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (Uniform Administrative Requirements). BIP grant recipients must comply with these and other requirements, including the Department of Commerce Financial Assistance Standard Terms and Conditions.

Except as otherwise provided by Federal statutes or by NTIA, 2 CFR § 200.311 requires that real property acquired or improved under a BIP award will be used for the originally authorized purpose as long as needed for that purpose, during which time the BIP recipient must not dispose of or encumber its title or other interests in the real property. This restriction includes the sale, lease, transfer, or mortgage of the real property. It is not meant to restrict a transfer of control of the awardee.

Unless otherwise specified in the terms of a waiver of this restriction, a sale, lease, or transfer pursuant to a waiver of this restriction does not remove the federal interest in the real property or relieve the purchaser or transferee of a duty to comply with the nondiscrimination and interconnection requirements applicable to the award.

2 CFR § 200.313 provides that equipment acquired under a BIP award must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project. A BIP recipient must not encumber its title to equipment acquired under a BIP award without the approval of NTIA.

Uniform Administrative and Other Requirements

The Uniform Administrative Requirements govern the use and disposition of BIP-funded equipment and real property. See 2 CFR §§ 200.310 – 316. As noted above, these requirements specify that property acquired or improved under a BIP award will be used for the originally authorized purpose as long as it is needed for that purpose. They also describe when such property may be used for other federally funded projects and set out the disposition requirements a BIP recipient must follow in cases in which the property is no longer needed. In many cases, the disposition requirements include sale of the property and repayment of the federal share to the government.

Federal Interest Specific Award Condition

The “Property Trust Relationship and Public Notice Filings for Grant-Acquired Property” Specific Award Condition (SAC) attached to each BIP award reinforces recipients’ compliance obligations with respect to the federal interest in the property. The Security Interest SAC provides that, in accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity (i.e., Recipient or Subrecipient) as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). The non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 CFR §§ 200.310 (Insurance coverage) through 200.316

(Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

The Grants Officer may require a non-Federal entity (i.e., a Recipient or Subrecipient) to execute and to record (as applicable) a statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part pursuant to a Broadband Infrastructure Program award is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. These requirements are explained in more detail in the BIP Federal Interest Documentation Fact Sheet.

Sale, Lease, or Transfer with a Continued Federal Interest

In some cases, a recipient may wish to sell, lease, or transfer its BIP Assets to another party that is willing to commit to use them for the purposes of the BIP award. If such a transaction is proposed prior to the end of the performance period, the recipient must notify NTIA and the NIST Grants Officer and request prior approval. After closeout of the award, the property holder is responsible for notifying NTIA and the NIST Grants Officer and requesting prior approval of the transaction.

The sale, lease, or transfer of BIP Assets during their useful life is prohibited unless NTIA and the NIST Grants Office approve the transaction. This restriction applies to all transactions that change title to the assets, including, but not limited to, a transfer to an affiliated entity (parent company, subsidiary, fully co-owned entity, or related government department). Accordingly, NTIA and NIST must be notified of such transactions and have the opportunity to review them. However, this restriction does not apply to a change of control, such as a stock sale, that does not change the title to the property. After the end of the performance period, a recipient is not required to notify NTIA and NIST of such changes in control.

To request prior approval for a sale, lease, or transfer before the end of the award performance period, a BIP recipient should submit an Award Action Request (AAR). At the end of the performance period, the entity holding the property should submit its request for prior approval via bbinfra@ntia.gov and ugam@nist.gov and mail a copy of its request to the address below:

BIP Prior Approvals

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4887
Washington, DC 20230

A petition requesting approval for a sale, lease, or transfer of BIP Assets must include supporting documentation and justification regarding why the petition should be granted. The request should, at a minimum, identify the BIP grant (e.g., by grant award number and the name of the recipient), state the name of the party that currently holds the assets and its relationship

to the project (e.g., recipient or subrecipient), describe the proposed transaction, and provide contact information for NTIA and/or NIST staff to follow up with questions.¹

Sale or Transfer of Assets with a Continued Federal Interest

As noted above, an entity that intends to sell or transfer title to BIP Assets must notify NTIA and NIST and request prior approval. Alternatively, the entity may consider whether a disposition of the assets, discussed in the section below, is more appropriate.

In evaluating whether a transaction is for adequate consideration, NTIA will consider the nature of the transaction and whether consideration is normally warranted. For example, the merger of a corporate subsidiary into a parent company does not involve consideration to the subsidiary.

NTIA and the NIST Grants Officer will also review whether the transaction is in the best interest of the Federal government. The purchaser or transferee must acknowledge the Federal interest in the assets and, after the transaction, file new documentation to provide notice of the Federal interest in the assets now held by the transferee. The purchaser or transferee must agree to comply with the requirements of the original award, including nondiscrimination and interconnection obligations, with respect to the facilities transferred. In evaluating whether a transaction is in the best interest of the Federal government, NTIA will consider the effect of the transaction on the beneficiaries and the service area of the funded project.

Disposition of Assets

When BIP Assets are no longer needed (or can no longer be used) for the purposes of the award, the Uniform Administrative Requirements control the disposition of assets.

Real Property Disposition

When real property is no longer needed for the originally authorized purpose, the BIP recipient must obtain disposition instructions from NTIA and the NIST Grants Officer. See 2 CFR § 200.311. Recipients should send a request for disposition instructions to NTIA and the NIST Grants Officer, accompanied by a Form SF-429,² at the addresses above.

NTIA and the Grants Officer may take one of the following actions:

- Permit the recipient to retain title to the property after compensating the federal government for that percentage of the current fair market value of the property attributable to federal participation in the project.
- Direct the recipient to sell the property and pay the federal government for that percentage of the current fair market value or sales proceeds attributable to the

¹ To the extent that requestors believe that the information they are providing is confidential, they may make a request for such information to be kept private and identify any information they believe should not be released to the public. They should also provide both a redacted and an unredacted version of their documents. Note, however, that NTIA will not necessarily approve such requests. If NTIA does approve, NTIA will keep information in the waiver request and in these additional documents private from public disclosure to the extent permitted by law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), and the Economic Espionage Act of 1996 (18 U.S.C. 1831 et seq.).

² The SF-429 is available at <https://www.grants.gov/forms/post-award-reporting-forms.html>.

federal participation in the project (after deducting actual and reasonable sale and fix-up expenses from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

- Direct the recipient to transfer title to NTIA or to an eligible third party and compensate the recipient for its attributable percentage of the fair market value of the property.

Equipment Disposition

When a recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. See 2 CFR § 200.313. Equipment with a current per-unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to NTIA. For equipment with a current fair market value in excess of \$5,000, the recipient may retain the equipment for other uses or sell it, provided that compensation is made to NTIA of the federal share of the fair market value (see 2 CFR §§ 200.312(b) and 200.313(e)(2) for certain exceptions to this rule). Recipients should report the retained equipment on Form SF-428, including Forms SF-428-C and SF-428-S.³ Recipients should submit the forms by email to NIST at ugam@nist.gov and by email to their federal program officer, and must repay the federal share of the fair market value through their Automated Standard Application for Payment (ASAP) account. If a recipient no longer has access to its ASAP account, inform the NIST Grants Officer and determine whether to contact the Department of Treasury to temporarily reopen the account or remit payment to NTIA via FEDWIRE or some other mechanism.

If the recipient will not retain the equipment, the regulations that apply to disposition of the equipment depend upon the type of recipient organization.

- *State entities* may dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. See 2 CFR § 200.313(b).
- *Non-state entities* must request disposition instructions from NTIA and the Grants Officer. Disposition of the equipment will be made as follows, in accordance with instructions from NTIA and the Grants Officer:
 - Items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of.
 - Items of equipment with a current fair market value of over \$5,000 may generally either be retained by the BIP recipient or sold if NTIA and the Grants Officer do not provide the requested disposition instructions within 120 days. If items are sold, NTIA must be reimbursed the federal share of the proceeds of the sale. A BIP recipient may also transfer title to the equipment to the Federal government or to an eligible third party provided that, in such cases, the recipient must be entitled to compensation for its attributable percentage of the current fair market value of the property. See 2 CFR § 200.313(e).

If a recipient disposes of a portion of its network, NTIA reserves the right to evaluate whether the use of the remaining network is serving the originally authorized purposes.

³ These forms are available at <https://www.grants.gov/forms/post-award-reporting-forms.html>.

Asset Disposition Prior to the End of the Award

Normally, when a recipient repays the federal share of the BIP Assets to the government, the proceeds are not available for use by the recipient and must be returned to the Treasury.

Replacement of Equipment

When acquiring replacement equipment, the BIP recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of NTIA and the NIST Grants Officer. See 2 CFR § 200.313(c). The request should be accompanied by a Form SF-428, with a request on Form-SF-428-C to replace the equipment and a list of the equipment on Form SF-428-S.

Mortgage of BIP Assets

NTIA retains an undivided equitable reversionary interest in BIP Assets. A holder of BIP Assets that wishes to use that property as collateral for a loan must obtain permission from NTIA and the NIST Grants Officer prior to doing so and must ensure that the lender's interest is subordinate to NTIA's federal interest in the property.

To request prior approval for a loan before the end of the award performance period, a recipient should submit an AAR. After the end of the performance period, the entity holding the property should submit its request for prior approval via bbinfra@ntia.gov and ugam@nist.gov and mail a copy of its request to the address above.

The request should, at a minimum, identify the BIP grant (e.g., by grant award number and name of recipient), state the name of the party that currently holds the assets and its relationship to the project (e.g., recipient or subrecipient), describe the assets at issue, describe the proposed transaction, and provide contact information for NTIA and/or NIST staff to follow up with questions.

Standard of Review for Encumbering BIP Assets

The Uniform Administrative Requirements impose a property trust relationship under which a grantee holds any property acquired using grant funds. The trust relationship and property usage requirements are enforced against the recipient in both standard and special award conditions. However, neither the Department of Commerce Financial Assistance Standard Terms and Conditions nor the award-specific special award conditions provide a standard of review for reviewing requests to mortgage BIP Assets or entering into arrangements where BIP Assets are used to secure a loan with an interest subordinate to NTIA's interest.

The following criteria will be applied to assess the merits of such future requests that NTIA and NIST may receive.

1. The recipient must demonstrate a need for the loan and that they have explored alternatives to encumbering the BIP Assets;
2. The recipient must demonstrate that the loan will support the continued financial sustainability of the BIP-funded project;
3. The loan request and accompanying documentation must adequately preserve the federal interest in the BIP Assets during their useful life;

4. The loan must further the BIP program purposes and the recipient must demonstrate that no unjust enrichment will result from obtaining and executing against the loan; and
5. There is a reasonable expectation, as determined by NTIA and the NIST Grant Officer, that the recipient will not default on its obligations.

Questions and Additional Resources

If recipients have any questions about this guidance, they may contact their NTIA Federal Program Officer or NIST Grants Officer.

For additional guidance, please refer to the following resources:

- Notice of Funding Opportunity, Broadband Infrastructure Program (May 19, 2021), available at: [NTIA Broadband Infrastructure Grant Program NOFO.Final .pdf \(doc.gov\)](#)
- Department of Commerce Financial Assistance Standard Terms and Conditions (November 12, 2020), available at: [DOC Standard Terms and Conditions - 12 November 2020 PDF 0.pdf \(commerce.gov\)](#)
- Title 2, Part 200, Subpart D of the Code of Federal Regulations, Post Federal Award Requirements, available at: [eCFR :: 2 CFR Part 200 Subpart D -- Post Federal Award Requirements](#)
- Broadband Infrastructure Program website, available at: [Broadband Infrastructure Program | BroadbandUSA \(doc.gov\)](#)