

Sale or Lease of Excess Real Property (February 2014)

23 CFR 710.403(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

FHWA does not prescribe how Local Public Agencies (LPAs) track income or expenditures from the sale or lease of excess real property acquired with federal funds. It is up to each LPA to develop their own process to inventory property acquired with federal funds, as well as the proceeds from the sale or lease of those properties acquired with such funds, including where such proceeds went and what they were used for. In an audit, the LPA would be expected to produce documentation to show they are in compliance with the regulation.

The proceeds of the sale or lease of excess lands acquired with federal funds do not have to be used for another federally funded project, but they must be used for a “Title 23” eligible project. There are no restrictions on the type of “activities” the proceeds are used for as long as the project is considered “eligible for funding under title 23”. The proceeds can be used for activities in any phase such as: design (PE), Right of Way (RW) or Construction (CN). For example, the money can be used to buy pavement for a 100% locally funded project. However, it likely could not be used to purchase playground equipment for a park.