

**Office of Surface Mining Reclamation and Enforcement**  
**FY 2016 – FY 2023 AMLER Program**  
**Protecting the Federal Interest in Real Property<sup>1</sup>**  
**Frequently Asked Questions**

**1. What is the Federal Interest in real property and how must it be protected under the AMLER Program?**

When Federal funds are used to purchase or improve real property, the Federal government has an interest in that property (the “Federal Interest”), which is expressed as the dollar amount that is the product of the: (1) percentage of Federal participation in the total cost of the real property . . . ; and (2) current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs. See [2 C.F.R. §§ 200.1](#) and [200.311\(d\)](#). For real property acquired or improved with AMLER funds issued between FY 2016 – FY 2023, non-Federal entities must comply with all grant terms and conditions and regulatory requirements. In general, the requirement to protect the Federal interest includes the following three elements: providing a legal notice to the public (notice); tracking the property and providing reports on the property to the Office of Surface Mining Reclamation and Enforcement (OSMRE) (tracking); and compliance with disposition instructions identified in Federal regulations and provided by OSMRE (disposition) (together, notice-tracking-disposition).

As a result of the statutory provision at 30 U.S.C. 1238, Federal Interest notice-tracking-disposition requirements do not apply to:

- AMLER funded projects that in their entirety restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on the property of any

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<sup>1</sup> These FAQs apply to projects that are entirely or partially funded using FY 2016 – FY 2023 AMLER funds and that include the acquisition and/or improvement of real property. According to 2 C.F.R. § 200.101(b), the property standards and program income regulations in 2 C.F.R. Part 200 subpart D do not apply to projects funded with FY 2024 AMLER monies.

Federal Interest notice, tracking, and disposition requirements do not apply to projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on the property of any person who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed with **AML fee based** funds or funds provided for AML reclamation under the **Infrastructure Investment and Jobs Act**~~Bipartisan Infrastructure Law~~. [See 30 U.S.C. 1238].

While there is also a Federal Interest in equipment and supplies, these FAQs address only the Federal Interest in real property.

- person who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed; or,
- Distinct and severable portions of AMLER funded projects that restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on the property of any person who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed. If portions are not distinct and severable, Federal Interest requirements apply to the entirety of the project.

For all other AMLER projects, Federal Interest requirements apply. When Federal Interest requirements apply, OSMRE will typically require non-Federal entities<sup>2</sup> to file a legal instrument in the real property records notifying the public that (1) the property has been acquired or improved with Federal funds, (2) use and disposition conditions apply to the property, and (3) the non-Federal entity must not dispose of or encumber its title or other interests without OSMRE's approval. See [2 C.F.R. §§ 200.311](#) and [200.316](#).

While tracking, use, and disposition requirements generally may not be waived, the requirement to file a legal instrument may be waived by OSMRE upon a demonstration by the recipient and/or subrecipient that the notice of the Federal interest is otherwise provided to OSMRE's satisfaction.<sup>3</sup> However, when the Federal Interest requirements apply, even when OSMRE does not require the filing of a legal instrument (notice), the tracking and disposition requirements for property acquired or improved with AMLER funds remain in force.

## **2. Why does the Federal Interest need to be protected?**

Real property acquired or improved with a Federal award must be held in trust by the recipient and/or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. [2 CFR § 200.316](#). In addition, the regulations governing Federal awards at [2 C.F.R. § 200.311\(d\)](#) require that the Federal awarding agency be compensated "when real property is no longer needed for the originally authorized purpose." Filing a legal instrument in the real property records that discloses the existence of the Federal interest helps ensure both that future owners of

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<sup>2</sup> OSMRE acknowledges that there are separate issues to be considered when protecting the Federal Interest in real property located on Tribal lands. While additional issues may emerge, OSMRE is not requiring a Tribe to file a notice or record a document to protect the Federal Interest in projects on Indian Trust Assets. See Question 18 below.

<sup>3</sup> As authorized by 2 C.F.R. § 200.316, for AMLER projects where the Federal Interest requirements apply, OSMRE is exercising its discretion and will typically require non-Federal entities to file a legal instrument protecting the Federal interest in AMLER projects where preliminary approval (vetting) (1) has not yet been provided, or (2) was provided after December 11, 2023.

the property are aware of the Federal interest and that the United States will receive any appropriate compensation at the time of disposition.

**3. What constitutes Improvements to real property for AMLER funded projects, or distinct and severable portions of AMLER funded projects, that do not restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on the property of any person who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed?**

Improvements to real property refers to any addition, alteration, renovation, or enhancement work that becomes part of or affixed to the real property, either permanently or for an indefinite period of time, and which increases the property's value, provides additional functionality, or extends its useful life. This may include:

- Construction of New Structures: Adding new buildings or facilities on the property.
- Renovation or Remodeling: Making significant changes to existing structures, such as updating interiors, systems (e.g., heating, plumbing, electrical), or layouts to improve functionality or aesthetic appeal.
- Site Development: Altering the land itself, including grading, drainage improvement, or landscaping that adds value.
- Installation of Permanent Fixtures: Adding or upgrading permanent installations such as roads, utilities, sidewalks, and parking lots.
- Major Repairs: Conducting significant repairs that restore or improve the utility of existing structures, as opposed to routine maintenance.

See, e.g., Internal Revenue Service definition at 26 C.F.R. § 1.856-10.

**4. Under what circumstances do recipients and/or subrecipients need to take steps to protect the Federal Interest in real property on applicable AMLER projects by filing a legal instrument in the real property records?**

Recipients and/or subrecipients will typically be required to record an instrument in the real property records notifying the public of OSMRE's interest whenever an applicable AMLER project involves the acquisition or improvement of real property. The requirement to file a legal instrument may be waived by OSMRE upon a demonstration by the recipients and/or subrecipients that the Federal interest is otherwise protected to OSMRE's satisfaction.

**5. Is a covenant or lien necessary to protect the Federal Interest?**

It depends. Federal regulations authorize a Federal awarding agency to require a recipient and/or subrecipient to record liens, covenants, or other appropriate notices of

record to indicate that real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. See [2 C.F.R. § 200.316](#). The optimal instrument may vary, but, in most circumstances, OSMRE anticipates requiring recipients and/or subrecipients to file a Notice of Federal Interest (NOFI), available on OSMRE's website, with the local real property records. If a recipient and/or subrecipient wants to use an alternative instrument, the State should provide the pertinent details to the OSMRE Field Office at the time the request for an Authorization to Proceed is made.

**6. At what point in the process should a recipient and/or subrecipient record a document to protect the Federal interest in real property?**

The appropriate date to record the instrument will be established as part of the Authorization to Proceed process and vary by project depending upon when the acquisition or improvement will be made. The NOFI or approved notice instrument must be recorded and reported by no later than the next scheduled reporting date after the real property has been acquired, improved (such that the value of the land has changed), or as directed by OSMRE. The recipient must maintain records documenting the recordation of the NOFI or approved notice instrument and make such records available upon the request of OSMRE.

**7. If there are multiple agencies contributing Federal funding (EDA, ARC, USADA, etc.) to an AMLER project, are all of them included when calculating the percentage of Federal participation? Or is AMLER funding the only Federal funding considered when calculating the percentage of Federal participation?**

Please consult with each contributing Federal agency to determine how their percentage of participation should be calculated. Unless otherwise instructed, applicable AMLER funding is the only Federal funding considered when calculating OSMRE's percentage of participation in the total cost of the real property. Additional information may be found in the instructions for completing Standard Form (SF) 429.<sup>4</sup>

**8. Is a calculation of the Federal Interest necessary at the vetting stage? Won't it change if changes are made to the project?**

No, it is not necessary to calculate the anticipated Federal Interest at the vetting stage for applicable AMLER projects; however, recipients and/or subrecipients should indicate if real property is to be purchased or improved as part of the project being vetted. While

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<sup>4</sup> Standard grant forms are available from: [grants.gov post-award-reporting-forms](#).

it is useful to discuss the anticipated percentage of Federal participation and anticipated Federal Interest at the vetting stage—because it indicates how dependent the project may be on other sources of funding—OSMRE does not require that the anticipated Federal Interest be calculated until the recipient and/or subrecipient submits a request for an Authorization to Proceed.

As part of the request for an Authorization to Proceed, recipient and/or subrecipient must use SF-429-B, “Request to Acquire, Improve or Furnish” for each parcel of real property that they are proposing to acquire or improve. This form includes a field that allows the recipient and/or subrecipient to identify the value of the property and both the Federal and non-Federal share.<sup>5</sup> It is necessary to identify the value of the property before OSMRE issues an Authorization to Proceed to establish a baseline for the existence and amount of the Federal Interest in the real property at issue. A new appraisal of the property’s value must be conducted only if the property is to be purchased. If property is to be improved but not purchased, a new appraisal is not necessary if the value of the property can be identified in some other way acceptable to OSMRE, e.g., from a previous appraisal on file at the County Assessor’s Office.

Changes to the project may change the percentage of Federal participation in the project, which is used to calculate the Federal Interest. For example, the percentage of Federal participation may shrink if additional non-AMLER funds are used to improve real property that was purchased or improved with AMLER funds. Any changes affecting the percentage of OSMRE’s participation in the project will be captured in the scheduled submission of SF-429-A “Real Property Status Report” and the instructions for completing that report.

#### **9. Who are the contact(s) at OSMRE for disposition instructions and questions?**

The applicable Field Office is the primary contact for State and Tribal AML programs, including AMLER programs.

#### **10. Is the Federal Interest calculated at disposition?**

Yes, the Federal Interest will be calculated at disposition using the SF-429-C<sup>6</sup>. See [2 C.F.R. § 200.311\(d\)](#).

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<sup>5</sup> See question 14f on SF-429-B and the corresponding instructions in “Instructions for the SF-429 Real Property Status Report.”

<sup>6</sup> See question 14e on SF-429-C and the corresponding instructions in “Instructions for the SF-429 Real Property Status Report.”

Whether the final calculation differs from previously calculated and reported figures will depend on (1) whether non-AMLER funds were subsequently used to make changes to the project that alter the percentage of Federal participation, and (2) the third-party appraised value of the real property.

This dynamic highlights the importance of capturing and memorializing the total cost of any non-AMLER capital expenditures throughout the life of the property, because those expenditures may alter the percentage of Federal participation at disposition.

**11. If a project is 100% Federally funded (property, infrastructure, construction, etc.), is 100% of the fair market value at the time of disposition returned to the federal government? Would this include the funds of the increased value of the property over the original federal contribution?**

Yes. The compensation due to OSMRE at disposition is not limited to the dollar amount of the original AMLER subaward. Instead, the compensation due is determined by applying OSMRE's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property at the time of disposition. If the fair market value of the property increased, the compensation owed to OSMRE could exceed the dollar amount of the original federal contribution. Conversely, if the fair market value of the property decreased, the compensation owed to OSMRE could be less than the dollar amount of the original federal contribution.

**12. At disposition, is the Federal interest in real property affected by equipment that will stay with the property?**

No, real property and equipment are separate cost categories and have different tracking and disposition regulations and procedures, so they must be accounted for separately.

**13. How does OSMRE advise recipients and/or subrecipients to protect the Federal Interest of an infrastructure project, e.g., sewer and water supply pipes, meters, tanks, other appurtenances?**

The approach to protecting the Federal interest in infrastructure components depends on whether those components are moveable or permanently affixed to the land or property. Movable utilities and appurtenances should be managed as equipment, in accordance with [2 C.F.R. § 200.313](#). Structures, facilities, etc., permanently affixed to land should be managed as real property, in accordance with [2 C.F.R. § 200.311](#).

Where improvements are made to real property through an easement, e.g., sewer and water lines, the owner of the easement, not the owner of the encumbered property, is responsible for complying with OSMRE's tracking and disposition instructions. If no

easement is placed against the property (i.e., the infrastructure resides on private property with no easement or ownership by a utility), the Federal Interest would attach to the property and be protected with a legal instrument.

**14. Some AMLER projects, particularly infrastructure projects, are initiated and completed on behalf of municipalities, local, city, or State government(s) whereby the governmental entity will own the improvements paid for with AMLER funds. Is ownership by a non-Federal governmental entity sufficient to protect the Federal Interest?**

No. The applicable regulation, [2 C.F.R. § 200.311\(d\)](#), does not exempt municipalities, local, city, or State governmental entities. In addition, governmental entities often sell property and, in some cases, face risk of bankruptcy. To protect the Federal Interest to the extent possible, OSMRE is exercising its discretion and will typically require non-Federal entities, including governmental entities,<sup>7</sup> to file a legal instrument in the real property records for each parcel of real property acquired or improved with AMLER funds. This requirement may be waived by OSMRE upon a demonstration by the recipient and/or subrecipient that the Federal Interest is otherwise protected to OSMRE's satisfaction. The Federal Interest tracking and disposition requirements generally may not be waived and apply to real property acquired or improved by a non-Federal governmental entity on applicable AMLER projects.

**15. If a State records a legal instrument to protect the Federal Interest, does that limit the disposition options available under [2 C.F.R. § 200.311\(d\)](#)?**

No. Filing a legal instrument to protect the Federal Interest will not preclude any of the disposition options available under [2 C.F.R. § 200.311\(d\)](#), including the option to transfer title to OSMRE or to a third party designated/approved by OSMRE.

**16. What happens once disposition is complete?**

When real property is no longer needed for the originally authorized purpose, recipients and/or subrecipients must obtain disposition instructions from OSMRE. Once the non-Federal entity has complied with the disposition instructions, the recipient and/or subrecipient's obligation to protect the Federal Interest will have been satisfied. OSMRE will promptly provide recipients and/or subrecipients with an acknowledgement that the Federal Interest has been satisfied and any recorded instrument may be removed.

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<sup>7</sup> As indicated above and addressed in Question 18, OSMRE is not requiring a Tribe to file a notice or record a document to protect the Federal Interest in projects on Indian Trust Assets.

**17. What is the necessary nexus of a proposed AMLER project to unreclaimed or previously reclaimed abandoned mine lands?**

In our guidance, OSMRE interpreted the direction that an AMLER project have a “nexus to economic and community development” to include “land adjacent to unreclaimed or previously reclaimed AML lands and polluted waters as justified by the State, Tribe, and/or the communities impacted by historic coal production.” OSMRE is applying a broad interpretation of “adjacent” in determining eligible lands within the Appalachian counties of the States identified by Congress in the applicable appropriations language that have had impacts from pre-SMCRA coal mining, or within the reservation boundaries of the three Tribes identified by Congress to receive AMLER funds.

**18. Do Tribes have to file a notice or record a document protecting the Federal interest in projects on Indian Trust Assets?**

No. However, the Federal Interest tracking and disposition requirements apply to real property acquired or improved on Indian Tribal Trust Assets as part of applicable AMLER projects.

**19. How long does the Federal Interest remain in the real property?**

The Federal regulations do not establish a time limit for the existence of the Federal Interest in real property; instead, the regulations assume that the Federal Interest will be extinguished once disposition is complete. OSMRE is actively exploring the possibility of establishing time limitations for the Federal Interest requirements on applicable AMLER projects.

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