Construction and Renovation using Federal ESSER Funds

While certain **c**onstruction and renovation projects related to "preventing, preparing for and responding to the coronavirus" are allowable under the Elementary and Secondary Schools Emergency Relief Funds (ESSER), local educational agencies (LEAs) must meet all statutory and other applicable requirements such as the Uniform Guidance, Davis-Bacon prevailing wage requirements, procurement requirements, general cost principles (reasonable, necessary and allocable 2 CFR 200.403), and the U.S. Department of Education's administrative regulations (EDGAR) at 34 CFR §§ 76.600 and 75.600-75.618. Projects should also be implemented within the Period of Availability of the funding source being used.

LEAs should review sections B-6 and B-7 of the USED FAQ and discuss proposed construction and renovation projects with their legal counsel to determine if costs are allowable. All construction and other capital expenditures/improvements supported with federal funds must be preapproved by the Ohio Department of Education through our CCIP Application Process, describing how projects are an allowable use under ESSER and signing off on all required assurances.

Note: This guidance is specific to the use of ESSER funds, however, Uniform Guidance applies to all federal funds. LEAs should apply the same process when considering using other federal education funds for capital projects.

Definitions

Capital Expenditures means expenditures to acquire capital assets (i.e., land, facilities, or equipment over $5,000 per unit) or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR 200.439; 200.1)

Construction means "(A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt service for such activities." (20 U.S.C. § 7713(3)

Minor Remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines. The term does not include building construction, structural alterations, building maintenance, or repairs. (34 CFR 77.1)

Maintenance and Repair Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements. (2 CFR 200.452)

Additional Considerations for LEAs in Leased Facilities

Minor remodeling or maintenance and repair activities that are necessary for an LEA to prevent, prepare for, and respond to COVID-19 *may* be permissible for LEAs in leased facilities (such as is the situation with many community schools) that meet all the requirements above. They must also follow the terms and conditions of their rental contract or lease agreement and consult with the building's title holder. Examples of allowable activities may include renovations that would permit an LEA to clean effectively (e.g., replacing old carpet with tile that could be cleaned more easily) or create a learning environment that could better sustain social distancing (e.g., bringing an unused wing of a school into compliance with fire and safety codes in order to reopen it to create more space for students to maintain appropriate social distancing).

Construction requires useful life of 50 years or more (34 CFR 75.603). In addition, the value of the cost incurred would depreciate over time. An LEA should maintain title to the items for any construction project purchased with federal funds. The LEA must assure that it possesses title or other interest in the site, including right of access, that is sufficient to ensure that the grantee will have use and possession of the facility for 50 years or the useful life of the facility, whichever is longer. An LEA would need to meet this

assurance to undergo any significant construction or renovation project, such as adding square footage to a facility, even if it is an allowable activity under ESSER.

Resources

Ohio Department of Education Grants Manual (updated 4/4/2022)
USED ARP ESSER FAQ (5/26/21)
USED "Using COVID Relief Funds for Facility Upgrades, Renovations and Construction" Webinar (9/2/2021)