

X is 100 percent (\$700/\$700). If LEA X receives \$100 per pupil in payments under the Act, \$100 per pupil may be taken into consideration by State A in determining LEA X's relative financial resources and needs under the program. LEA X is regarded as contributing \$800 and State A would now contribute the \$100 difference.

Example 2. The initial facts are the same as in Example 1, except that LEA X, under a permissible additional levy outside the equalization program, raises an additional \$100 per pupil not covered under the equalization program. The permissible levy is not included in local tax revenues covered under the equalization program but it is included in total local tax revenues. The percentage of payments under the Act that may be taken into consideration is 87.5 percent (\$700/\$800). If LEA X receives \$100 per pupil in payments under the Act, \$87.50 per pupil may be taken into consideration. LEA X is now regarded as contributing \$787.50 per pupil under the program and State A would now contribute \$112.50 per pupil as the difference.

Example 3. State B has an equalization program under which each LEA is guaranteed \$900 per pupil for contributing the equivalent of a two mill tax levy. LEA X contributes \$700 per pupil from a two mill tax levy and an additional \$500 per pupil from local interest, bake sales, in-kind contributions, and other non-tax local sources. The percentage of funds under the Act that may be taken into consideration by State A for LEA X is 100 percent (\$700/\$700). The local revenue received from interest, bake sales, in-kind contributions and other non-tax local revenues are excluded from the computation since they are from non-tax sources. If LEA X receives \$100 per pupil in payments under the Act, \$100 per pupil may be taken into consideration by State A in determining LEA X's relative financial resources and needs under the program. LEA X is regarded as contributing \$800 and State A would now contribute the \$100 difference.

Example 4. State C has an equalization program in which each participating LEA is guaranteed a certain per pupil revenue at various levels of tax rates. For an eight mill rate the guarantee is \$500, for nine mills \$550, for 10 mills \$600. LEA X levies a 10 mill rate and realizes \$300 per pupil. Furthermore, it levies an additional 10 mills under a local leeway option realizing another \$300 per pupil. The \$300 proceeds of the local leeway option are not included in local tax revenues covered under the equalization program, but they are included in total local tax revenues. The percentage of payments under the Act that may be taken into consideration is 50 percent (\$300/\$600). If LEA X receives \$100 per pupil in payments under the Act, \$50 per pupil may be taken into consideration. LEA X may be regarded as contributing \$350 per

pupil under the program and State B would now contribute \$250 as the difference.

Example 5. The initial facts are the same as in Example 4, except that LEA Y in State C, while taxing at the same 10 mill rate for both the equalization program and leeway allowance as LEA X, realizes \$550 per pupil for each tax. As with LEA X, the percentage of payments under the Act that may be taken into consideration for LEA Y is 50 percent (550/1100). If LEA Y receives \$150 per pupil in payments under the Act, then up to \$75 per pupil normally could be taken into consideration. However, since LEA Y would have received only \$50 per pupil in State aid, only \$50 of the allowable \$75 could be taken into consideration. Thus, LEA Z may be regarded as contributing \$600 per pupil under the program and State B would not contribute any State aid.

Subpart L—Impact Aid Discretionary Construction Grant Program Under Section 8007(b) of the Act

SOURCE: 69 FR 12235, Mar. 15, 2004, unless otherwise noted.

GENERAL

§ 222.170 What is the purpose of the Impact Aid Discretionary Construction grant program (Section 8007(b) of the Act)?

The Impact Aid Discretionary Construction grant program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive formula Impact Aid funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.171 What LEAs may be eligible for Discretionary Construction grants?

(a) Applications for these grants are considered in four funding priority categories. The specific requirements for each priority are detailed in §§ 222.177 through 222.182.

(b)(1) Generally, to be eligible for an emergency construction grant, an LEA must—

(i) Enroll a high proportion (at least 40 percent) of federally connected children in average daily attendance (ADA) who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(ii) Have a school that enrolls a high proportion of one of these types of students;

(iii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; or

(iv) Meet the specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of the emergency.

(c)(1) Generally, to be eligible for a modernization construction grant, an LEA must—

(i) Be eligible for Impact Aid funding under either section 8002 or 8003 of the Act;

(ii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act;

(iii) Enroll a high proportion (at least 40 percent) of federally connected children in ADA who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(iv) Have a school that enrolls a high proportion of one of these types of students; or

(v) Meet the specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of its need for modernization funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.172 What activities may an LEA conduct with funds received under this program?

(a) An LEA may use emergency grant funds received under this program only to repair, renovate, alter, and, in the limited circumstances described in paragraph (c) of this section, replace a public elementary or secondary school facility used for free public education to ensure the health and safety of students and personnel, including providing accessibility for the disabled as part of a larger project.

(b) An LEA may use modernization grant funds received under this program only to renovate, alter, retrofit, extend, and, in the limited circumstances described in paragraph (c) of this section, replace a public elementary or secondary school facility used for free public education to provide school facilities that support a contemporary educational program for the LEA's students at normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

(c)(1) An emergency or modernization grant under this program may be used for the construction of a new school facility but only if the Secretary determines—

(i) That the LEA holds title to the existing facility for which funding is requested; and

(ii) In consultation with the grantee, that partial or complete replacement of the facility would be less expensive or more cost-effective than improving the existing facility.

(2) When construction of a new school facility is permitted, emergency and modernization funds may be used only for a new school facility that is used for free public education. These funds may be used for the—

(i) Construction of instructional, resource, food service, and general or administrative support areas, so long as they are a part of the instructional facility; and

(ii) Purchase of initial equipment or machinery, and initial utility connections.

(Authority: 20 U.S.C. 7707(b))

§ 222.173 What activities will not receive funding under a Discretionary Construction grant?

The Secretary does not fund the following activities under a Discretionary Construction grant:

(a) Improvements to facilities for which the LEA does not have full title or other interest, such as a leasehold interest.

(b) Improvements to or repairs of school grounds, such as environmental remediation, traffic remediation, and landscaping, that do not directly involve instructional facilities.

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(c) Repair, renovation, alteration, or construction for stadiums or other facilities that are primarily used for athletic contests, exhibitions, and other events for which admission is charged to the general public.

(d) Improvements to or repairs of teacher housing.

(e) Except in the limited circumstances as provided in § 222.172(c), when new construction is permissible, acquisition of any interest in real property.

(f) Maintenance costs associated with any of an LEA's school facilities.

(Authority: 20 U.S.C. 7707(b))

§ 222.174 What prohibitions apply to these funds?

Grant funds under this program may not be used to supplant or replace other available non-Federal construction money. These grant funds may be used for emergency or modernization activities only to the extent that they supplement the amount of construction funds that would, in the absence of these grant funds, be available to a grantee from non-Federal funds for these purposes.

Example 1. "Supplanting." An LEA signs a contract for a \$300,000 roof replacement and plans to use its capital expenditure fund to pay for the renovation. Since the LEA already has non-Federal funds available for the roof project, it may not now use a grant from this program to pay for the project or replace its own funds in order to conserve its capital fund.

Example 2. "Non-supplanting." The LEA from the example of supplanting that has the \$300,000 roof commitment has also received a \$400,000 estimate for the replacement of its facility's heating, ventilation, and air conditioning (HVAC) system. The LEA has not made any commitments for the HVAC system because it has no remaining funds available to pay for that work. Since other funds are not available, it would not be supplanting if the LEA received an emergency grant under this program to pay for the HVAC system.

(Authority: 20 U.S.C. 7707(b))

§ 222.175 What regulations apply to recipients of funds under this program?

The following regulations apply to the Impact Aid Discretionary Construction program:

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(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) except for 34 CFR §§ 75.600 through 75.617.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

(c) The regulations in 34 CFR part 222.

(Authority: 20 U.S.C. 1221e-3)

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33170, June 11, 2015]

§ 222.176 What definitions apply to this program?

(a) In addition to the terms referenced in 34 CFR 222.2, the following definitions apply to this program:

Bond limit means the cap or limit that a State may impose on an LEA's capacity for bonded indebtedness. For applicants in States that place no limit on an LEA's capacity for bonded indebtedness, the Secretary shall consider the LEA's bond limit to be 10 percent of its total assessed valuation.

Construction means

(1) Preparing drawings and specifications for school facilities;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities as described in § 222.172(b);

(4) Erecting or building school facilities, as described in § 222.172(c); and

(5) Inspections or supervision related to school facilities projects.

Emergency means a school facility condition that is so injurious or hazardous that it either poses an immediate threat to the health and safety of the facility's students and staff or can be reasonably expected to pose such a threat in the near future. These conditions can include deficiencies in the following building features: a roof; electrical wiring; a plumbing or sewage system; heating, ventilation, or air conditioning; the need to bring a school facility into compliance with fire and safety codes, or providing accessibility for the disabled as part of a larger project.

Level of bonded indebtedness means the amount of long-term debt issued by an LEA divided by the LEA's bonding capacity.

Minimal capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is at least \$25,000,000 but not more than \$50,000,000.

Modernization means the repair, renovation, alteration, or extension of a public elementary or secondary school facility in order to support a contemporary educational program for an LEA's students in normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

No practical capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is less than \$25,000,000.

School facility means a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility.

Total assessed value per student means the assessed valuation of real property per pupil (AVPP), unless otherwise defined by an LEA's State.

(b) The following terms used in this subpart are defined or referenced in 34 CFR 77.1:

- Applicant
- Application
- Award
- Contract
- Department
- EDGAR

- Equipment
- Fiscal year
- Grant
- Grantee
- Project
- Public
- Real property
- Recipient

(Authority: 20 U.S.C. 7707(b) and 1221e-3)

ELIGIBILITY

§ 222.177 What eligibility requirements must an LEA meet to apply for an emergency grant under the first priority?

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

- (a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act;
- (b)(1) Has no practical capacity to issue bonds;
- (2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or
- (3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and
- (c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.178 What eligibility requirements must an LEA meet to apply for an emergency grant under the second priority?

Except as provided in §222.179, an LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

- (a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;
- (b)(1) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or
- (2) Enrolls federally connected children with a parent in the U.S. unformed services equal to at least 40 percent of the total number of children in ADA in its schools;

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(c) Has used at least 75 percent of its bond limit;

(d) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.179 Under what circumstances may an ineligible LEA apply on behalf of a school for an emergency grant under the second priority?

An LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other eligibility criteria described in § 222.178(a) or (b) may apply on behalf of a school located within its geographic boundaries for an emergency grant under the second priority of section 8007(b) of the Act if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

(Authority: 20 U.S.C. 7707(b))

§ 222.180 What eligibility requirements must an LEA meet to apply for a modernization grant under the third priority?

An LEA is eligible to apply for a modernization grant under the third priority of section 8007(b) of the Act if—

(a) Is eligible to receive funds for the fiscal year under section 8002 or 8003(b) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.181 What eligibility requirements must an LEA meet to apply for a modernization grant under the fourth priority?

An LEA is eligible to apply for a modernization grant under the fourth priority of section 8007(b) of the Act if it—

(a)(1) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act; and

(i) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(ii) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools; or

(2) Is eligible to receive assistance for the fiscal year under section 8002 of the Act;

(b) Has used at least 75 percent of its bond limit;

(c) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.182 Under what circumstances may an ineligible LEA apply on behalf of a school for a modernization grant under the fourth priority?

An LEA that is eligible to receive a payment under Title VIII for the fiscal year but that does not meet the other eligibility criteria described in § 222.181 may apply on behalf of a school located within its geographic boundaries for a modernization grant under the fourth priority of section 8007(b) of the Act if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The LEA has used at least 75 percent of its bond limit;

(c) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) The school has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

HOW TO APPLY FOR A GRANT

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit only one application for one educational facility for each competition.

(b) An application must—

(1) Contain the information required in §§ 222.184 through 222.186, as applicable, and in any application notice that the Secretary may publish in the FEDERAL REGISTER; and

(2) Be timely filed in accordance with the provisions of the Secretary's application notice.

(Approved by the Office of Management and Budget under control number 1810-0657)

(Authority: 20 U.S.C. 7707(b))

[60 FR 50778, Sept. 29, 1995, as amended at 76 FR 23713, Apr. 28, 2011]

§ 222.184 What information must an application contain?

An application for an emergency or modernization grant must contain the following information:

(a) The name of the school facility the LEA is proposing to repair, construct, or modernize.

(b)(1) For an applicant under section 8003(b) of the Act, the number of federally connected children described in section 8003(a)(1) enrolled in the school facility, as well as the total enrollment in the facility, for which the LEA is seeking a grant; or

(2) For an applicant under section 8002 of the Act, the total enrollment, for the preceding year, in the LEA and in the school facility for which the LEA is seeking a grant, based on the fall State count date.

(c) The identification of the LEA's interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(d) The original construction date of the school facility that the LEA proposes to renovate or modernize.

(e) The dates of any major renovations of that school facility and the areas of the school covered by the renovations.

(f) The proportion of Federal acreage within the geographic boundaries of the LEA.

(g) Fiscal data including the LEA's—

(1) Maximum bonding capacity;

(2) Amount of bonded debt;

(3) Total assessed value of real property available to be taxed for school purposes;

(4) State average assessed value per pupil of real property available to be taxed for school purposes;

(5) Local real property tax levy, in mills or dollars, used to generate funds for capital expenditures; and

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(6) Sources and amounts of funds available for the proposed project.

(h) A description of the need for funds and the proposed project for which a grant under this subpart L would be used, including a cost estimate for the project.

(i) Applicable assurances and certifications identified in the approved grant application package.

(Approved by the Office of Management and Budget under control number 1810-0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.185 What additional information must be included in an emergency grant application?

In addition to the information specified in § 222.184, an application for an emergency grant must contain the following:

(a) A description of the deficiency that poses a health or safety hazard to occupants of the facility.

(b) A description of how the deficiency adversely affects the occupants and how it will be repaired.

(c) A statement signed by an appropriate local official, as defined below, that the deficiency threatens the health and safety of occupants of the facility or prevents the use of the facility. An appropriate local official may include a local building inspector, a licensed architect, or a licensed structural engineer. An appropriate local official may not include a member of the applicant LEA's staff.

(Approved by the Office of Management and Budget under control number 1810-0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.186 What additional information must be included in a modernization grant application?

In addition to the information specified in § 222.184, an application for a modernization grant must contain a description of—

(a) The need for modernization; and

(b) How the applicant will use funds received under this program to address the need referenced in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1810-0657)

(Authority: 20 U.S.C. 7707(b))

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§ 222.187 Which year's data must an SEA or LEA provide?

(a) Except as provided in paragraph (b) of this section, the Secretary will determine eligibility under this discretionary program based on student and fiscal data for each LEA from the fiscal year preceding the fiscal year for which the applicant is applying for funds.

(b) If satisfactory fiscal data are not available from the preceding fiscal year, the Secretary will use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

(Authority: 20 U.S.C. 7707(b))

HOW GRANTS ARE MADE

§ 222.188 What priorities may the Secretary establish?

In any given year, the Secretary may assign extra weight for certain facilities systems or emergency and modernization conditions by identifying the systems or conditions and their assigned weights in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 7707(b))

§ 222.189 What funding priority does the Secretary give to applications?

(a) Except as provided in paragraph (b) of this section, the Secretary gives funding priority to applications in the following order:

(1) First priority is given to applications described under § 222.177 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(2) After all eligible first-priority applications are funded, second priority is given to applications described under §§ 222.178 and 222.179 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(3) Third priority is given to applications described under § 222.180 and,

among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(4) Fourth priority is given to applications described under §§ 222.181 and 222.182 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(b)(1) The Secretary makes awards in each priority described above until the Secretary is unable to make an approvable award in that priority.

(2) If the Secretary is unable to fund a full project or a viable portion of a project, the Secretary may continue to fund down the list of high-ranking applicants within a priority.

(3) The Secretary applies any remaining funds to awards in the next priority.

(4) If an applicant does not receive an emergency or modernization grant in a fiscal year, the Secretary will, subject to the availability of funds and to the priority and award criteria, consider that application in the following year along with the next fiscal year's pool of applications.

Example: The first five applicants in priority one have been funded. Three hundred thousand dollars remain available. Three unfunded applications remain in that priority. Application #6 requires a minimum of \$500,000, application #7 requires \$400,000, and application #8 requires \$300,000 for a new roof and \$150,000 for related wall and ceiling repairs. Applicant #8 agrees to accept the remaining \$300,000 since the roof upgrade can be separated into a viable portion of applicant #8's total project. Applications #6 and #7 will be retained for consideration in the next fiscal year and will compete again with that fiscal year's pool of applicants. Applicant #8 will have to submit a new application in the next fiscal year if it wishes to be considered for the unfunded portion of the current year's application.

(Authority: 20 U.S.C. 7707(b))

§ 222.190 How does the Secretary rank and select applicants?

(a) To the extent that they are consistent with these regulations and section 8007(b) of the Act, the Secretary

will follow grant selection procedures that are specified in 34 CFR 75.215 through 75.222. In general these procedures are based on the authorizing statute, the selection criteria, and any priorities or other applicable requirements that have been published in the FEDERAL REGISTER.

(b) In the event of ties in numeric ranking, the Secretary may consider as tie-breaking factors: the severity of the emergency or the need for modernization; for applicants under section 8003 of the Act, the numbers of federally connected children who will benefit from the project; or for applicants under section 8002 of the Act, the numbers of children who will benefit from the project; the AVPP compared to the LEA's State average; and available resources or non-Federal funds available for the grant project.

(Authority: 20 U.S.C. 7707(b))

§ 222.191 What is the maximum award amount?

(a) Subject to any applicable contribution requirements as described in §§ 222.192 and 222.193, the procedures in 34 CFR 75.231 through 75.236, and the provisions in paragraph (b) of this section, the Secretary may fund up to 100 percent of the allowable costs in an approved grantee's proposed project.

(b) An award amount may not exceed the difference between—

(1) The cost of the proposed project; and

(2) The amount the grantee has available or will have available for this purpose from other sources, including local, State, and other Federal funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.192 What local funds may be considered as available for this project?

To determine the amount of local funds that an LEA has available under § 222.191(b)(2) for a project under this program, the Secretary will consider as available all LEA funds that may be used for capital expenditures except \$100,000 or 10 percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater. The Secretary will not consider capital funds that an

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LEA can demonstrate have been committed through signed contracts or other written binding agreements but have not yet been expended.

(Authority: 20 U.S.C. 7707(b))

§ 222.193 What other limitations on grant amounts apply?

(a) Except as provided in paragraph (b) of this section and §222.191, the amount of funds provided under an emergency grant or a modernization grant awarded to an eligible LEA is subject to the following limitations:

(1) The award amount may not be more than 50 percent of the total cost of an approved project.

(2) The total amount of grant funds may not exceed four million dollars during any four-year period.

Example: An LEA that is awarded four million dollars in the first year may not receive any additional funds for the following three years.

(b) Emergency or modernization grants to LEAs with no practical capacity to issue bonds as defined in §222.176 are not subject to the award limitations described in paragraph (a) of this section.

(Authority: 20 U.S.C. 7707(b))

§ 222.194 Are "in-kind" contributions permissible?

(a) LEAs that are subject to the applicable matching requirement described in §222.193(a) may use allowable third party in-kind contributions as defined below to meet the requirements.

(b) Third party in-kind contributions mean property or services that benefit this grant program and are contributed by non-Federal third parties without charge to the grantee or by a cost-type contractor under the grant agreement.

(c) Subject to the limitations of 34 CFR 75.564(c)(2) regarding indirect costs, the provisions of 2 CFR 200.306 govern the allowability and valuation of in-kind contributions, except that it is permissible for a third party to contribute real property to a grantee for a project under this program, so long as

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no Federal funds are spent for the acquisition of real property.

(Authority: 20 U.S.C. 7707(b))

[69 FR 12235, Mar. 15, 2004, as amended at 79 FR 70695, Dec. 19, 2014]

**CONDITIONS AND REQUIREMENTS
GRANTEES MUST MEET**

§ 222.195 How does the Secretary make funds available to grantees?

The Secretary makes funds available to a grantee during a project period using the following procedure:

(a) Upon final approval of the grant proposal, the Secretary authorizes a project period of up to 60 months based upon the nature of the grant proposal and the time needed to complete the project.

(b) The Secretary then initially makes available to the grantee 10 percent of the total award amount.

(c) After the grantee submits a copy of the emergency or modernization contract approved by the grantee's governing board, the Secretary makes available 80 percent of the total award amount to a grantee.

(d) The Secretary makes available up to the remaining 10 percent of the total award amount to the grantee after the grantee submits a statement that—

(1) Details any earnings, savings, or interest;

(2) Certifies that—

(i) The project is fully completed; and

(ii) All the awarded funds have been spent for grant purposes; and

(3) Is signed by the—

(i) Chairperson of the governing board;

(ii) Superintendent of schools; and

(iii) Architect of the project.

(Authority: 20 U.S.C. 7707(b))

§ 222.196 What additional construction and legal requirements apply?

(a) Except as provided in paragraph (b) of this section, a grantee under this program must comply with—

(1) The general construction legal requirements identified in the grant application assurances;

(2) The prevailing wage standards in the grantee's locality that are established by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*); and

(3) All relevant Federal, State, and local environmental laws and regulations.

(b) A grantee that qualifies for a grant because it enrolls a high proportion of federally connected children who reside on Indian lands is considered to receive a grant award primarily for the benefit of Indians and must therefore comply with the Indian preference requirements of section 7(b) of the Indian Self-Determination Act.

(Authority: 20 U.S.C. 7707(b) and 1221e-3)

PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

Subpart A—General

Sec.

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AUTHORITY: 20 U.S.C. 1221e-3, 1232, and 7221c.

SOURCE: 70 FR 15003, Mar. 24, 2005, unless otherwise noted.

Subpart A—General

§ 225.1 What is the Credit Enhancement for Charter School Facilities Program?

(a) The Credit Enhancement for Charter School Facilities Program provides grants to eligible entities to assist charter schools in obtaining facilities.

(b) Grantees use these grants to do the following:

(1) Assist charter schools in obtaining loans, bonds, and other debt instruments for the purpose of obtaining, constructing, and renovating facilities.

(2) Assist charter schools in obtaining leases of facilities.

(3) Assist charter schools with the predevelopment costs required to assess sites for the purpose of acquiring (by purchase, lease, donation, or otherwise) an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property or constructing new facilities, or renovating, repairing, or altering existing facilities, and that are necessary to commence or continue the operation of a charter school.

(c) Grantees may demonstrate innovative credit enhancement initiatives while meeting the program purposes under paragraph (b) of this section.

(d) For the purposes of these regulations, the Credit Enhancement for Charter School Facilities Program includes grants made under the Charter School Facilities Financing Demonstration Grant Program.

[70 FR 15003, Mar. 24, 2005, as amended at 84 FR 25998, June 5, 2019]

§ 225.2 Who is eligible to receive a grant?

The following are eligible to receive a grant under this part:

(a) A public entity, such as a State or local governmental entity;

(b) A private nonprofit entity; or

(c) A consortium of entities described in paragraphs (a) and (b) of this section.

[70 FR 15003, Mar. 24, 2005, as amended at 84 FR 25998, June 5, 2019]