



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

84.425C - GEER
84.425D - ESSER
84.425R - reverted CRRSA EANS
84.425U - ARP ESSER
84.425V - reverted ARP EANS

March 21, 2024

Dear Colleagues:

I'm writing to provide guidance regarding the government-wide recording and reporting requirements and to clarify how they apply to the use of Federal funds to improve facilities, including school buildings. While most U.S. Department of Education (Department) grant programs prohibit use of these funds for grantee construction activities, facilities improvements may be allowable projects under certain programs that were authorized to assist educational entities in responding to the COVID-19 pandemic, including the Elementary and Secondary School Emergency Relief (ESSER) Fund, the Governor's Emergency Education Relief (GEER) Fund, and Emergency Assistance to Non-public Schools funds that have reverted to governors (reverted EANS). Many States and subgrantees have used these funds to make critical improvements in schools' indoor air quality; remediate lead, mold, and other environmental hazards in aging facilities; and keep schools operating safely for in-person learning.

Given these investments, the Department has received inquiries concerning separate reporting and recording requirements related to acquisition or improvement of facilities with Federal funds.^{1, 2} The *reporting* requirement ([2 CFR § 200.330](#)), set by the Office of Management and Budget (OMB), provides that grant and subgrant recipients must report annually, for at least the first 15 years, on the status of the real property in which the Federal government has made a monetary investment and therefore has an ongoing interest. The Federal interest *recording* requirement ([2 CFR § 200.316](#)), in combination with the OMB construction grant assurances, provides Federal agencies with discretion as to when recipients are required to locally record notices of Federal interest (or other public notices of record, such as liens) regarding that Federal interest. In general, these longstanding requirements help ensure that a facility can continue to be used for educational purposes after a grant has ended; establish the level of public investment in the facility that may be recouped if the property is subsequently transferred to private ownership; and promotes nondiscrimination, including accessibility, while the property is used for a grant's educational purpose.

¹ Federal interest is defined in [2 CFR § 200.1](#), which specifies that the Federal share is calculated based on the value of the Federal contribution and the total fair market value of the property, the improvements, or both.

² Disclosure of these requirements was included in the grantee assurances for the ESSER, GEER, and EANS programs, and these requirements are further described in B.6. and B.6.e. of the related [Frequently Asked Questions document](#).

While all grantees and subgrantees must continue to meet OMB real property reporting requirements, the Department generally will exempt grantees and subgrantees that use less than \$1 million in COVID-19 relief funds for a renovation, major remodeling, construction, or other real property project (such as a land acquisition) from *recording* the Federal interest. This determination reflects increased market values for real property and improvements, the Department's desire to focus recording activities on the most significant projects, and our presumption that the administrative burden of recording the Federal interest generally outweighs the benefits for projects below this threshold.³ Grantees or subgrantees with a renovation, major remodeling, construction, or real property project where the Federal interest is significant—typically, that use more than \$1 million in COVID-19 relief funds—must record the notice of Federal interest (NFI) in the official real property records for the jurisdiction in which the improved or purchased property is located. **All grantees and subgrantees that have a renovation, major remodeling, construction, or real property project of \$1 million or more in funds from these programs must record all NFIs by January 28, 2025.**

As noted above, all grantees and subgrantees continue to be subject to the annual real property reporting requirements in [2 CFR § 200.330](#), regardless of the amount of the Federal interest. The State educational agency (SEA) or other grantee must annually collect from the local educational agencies (LEAs) or other subgrantees a [Real Property Status Report](#) (Cover Page) (SF-429) along with the other applicable Standard Form 429 Attachment (A or C). These forms must be submitted to the SEA or other grantee by their deadline (and annually after the end of the grant). Typically, an LEA or other subgrantee will submit the cover page form and Attachment A. Attachment C *is only used* when there is a real property disposition (please see 2 CFR §§ 200.310-200.313). In addition, SEAs or other grantees that have received prior approval for a renovation, major remodeling, construction, or a real property project directly from the Department must annually submit a [Real Property Status Report](#) (Cover Page) (SF-429) along with the other applicable Standard Form 429 Attachments (A or C) to the Department for each parcel of real property improved with Federal funds.

Attached, please find a Frequently Asked Questions document with further guidance on these requirements. As always, we appreciate your hard work to invest COVID relief funds effectively and with transparency.

Sincerely,



Adam Schott
Principal Deputy Assistant Secretary
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

³ For specific examples of the types of case-by-case situations where the Department or an SEA may yet require recording even though a project is under \$1 million or may not require recording even though a project is over \$1 million, please see the attached Frequently Asked Questions.

Elementary and Secondary School Emergency Relief (ESSER) Programs Governor's Emergency Education Relief (GEER) Programs⁴

Reporting and Recording Federal Interest in Property Frequently Asked Questions⁵

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The following Frequently Asked Questions (FAQs) address the Federal requirements to report and record on the Federal interest in property improved or purchased in whole or in part by ESSER, GEER, and reverted EANS grant funds.

Recording the Notice of Federal Interest Questions:

1. Question: Which grantees and subgrantees need to record a notice of Federal interest?

Answer: Generally, grantees and subgrantees that have a renovation, major remodeling, construction, or real property project using \$1 million or more in Federal funds must record the notice of Federal interest (NFI) in the official real property records for the jurisdiction in which the improved or purchased property is located. ESSER, GEER, and reverted EANS grantees or subgrantees that have a renovation, major remodeling, construction, or real property project using less than \$1 million in Federal funds from these specific programs are generally not subject to this requirement, provided that other relevant factors do not warrant a different outcome. This determination reflects increased market values for real property and improvements, the Department's desire to focus recording activities on the most significant projects, and our presumption that the administrative burden of recording the Federal interest generally outweighs the benefits for projects below this threshold.

We recognize that there still may be some case-by-case situations where the Department may require recording even for a project that uses less than \$1 million in the Federal funds described above. For example, the Federal interest in a project could still be significant even when the project uses less than \$1 million in Federal funds if the Federal funds represented the vast majority of the total value (such as a building with a total value of \$1.5 million that used \$900,000 in Federal funds). Or, for example, if the Department determines (including on a State grantee's recommendation) that an LEA is in high-risk status, the Department may require recording as a prudent safeguard to further protect the Federal interest from other liens that could prevent the building from being used for its educational purpose.

Conversely, the Federal interest in a project could be insignificant even if it uses slightly above \$1 million in Federal funds, if the Federal funds represented a very small portion of the total value (such as a building with a total value of \$100 million that used \$1,000,005 in Federal

⁴ References to GEER funds include any reverted EANS funds that are available for uses under GEER II.

⁵ Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

funds). If you have questions on the application of this guidance to a particular project, please contact your State program officer.

Regardless, note that the Federal interest exists in improved real property even if the Federal interest is not recorded (see question 4). For renovation, major remodeling, construction, or real property projects where the Federal funds used from ESSER, GEER, and reverted EANS funds are less than \$1 million, grantees and subgrantees must still maintain adequate documentation regarding protection of all Federal interest. This includes timely filing the annual real property reporting forms referenced below and maintaining the associated records. Additionally, grantees and subgrantees must follow the real property disposition requirements noted in [Frequently Asked Question B.6.e](#). At its discretion, a grantee could require its subgrantees to record a notice of Federal interest for a project that uses less than \$1 million in ESSER, GEER, and reverted EANS funds.

2. Question: By when does a grantee or subgrantee need to record a notice of Federal interest (NFI)?

Answer: Any ESSER, GEER, and reverted EANS grantee or subgrantee that has a renovation, major remodeling, construction, or real property project of \$1 million dollars or more in Federal funds must record all NFIs by January 28, 2025. In certain situations, as described in answer 1, the Department or an SEA may also require recording a project even though the Federal funds invested in the project are less than \$1 million.

3. Question: What are the requirements for an NFI?

Answer: Grantees should check with their local jurisdiction for instructions on how to record the Federal interest. Typically, there are six general requirements for an NFI:⁶

1. The NFI must reference the appropriate P/R Award Number, i.e., P425XXXXXXX (this can be found in Box 2 of your Grant Award Notification (GAN)).
2. The description of the project should clearly describe the approved construction project, renovation, or purchase supported in part or whole by grant funds.
3. The legal description should be preferably the full legal description of the property in the deed. However, Township and Range, or Map, Block, and Lot number will be accepted. A physical address may be included, but it does not constitute a sufficient legal description by itself.
4. The signatory of the NFI should be the owner of the property or authorized representative. This indicates the owner's consent to have a lien filed on the property.
5. The NFI must then be notarized and embossed with a notary seal.
6. The NFI must then be recorded with the applicable jurisdiction.

⁶ This guidance is based on information from [FAQ: Federal Interest in Real Property \(hrsa.gov\)](#) found at the United States Health and Human Services' Bureau of Primary Health Care's Health Resources & Services Administration's website at www.bphc.hrsa.gov.

Reporting the Federal interest using the SF-429 Questions:

1. Question: What are grantees and subgrantees required to report on property improved or purchased, in whole or in part, by Federal grant funds?

Answer: All grantees and subgrantees that have property that was improved or purchased, in whole or in part, by Federal grant funds from the programs described above must submit a **Real Property Status Report** (Cover Page) (SF-429) along with the other applicable SF-429 Attachments (A or C). Real property is defined in [2 CFR § 200.1](#) as “land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.” Moveable equipment may include HVAC equipment, mobile classrooms, building furniture, and other similar items.

Typically, a grantee or subgrantee will submit the cover page form and Attachment A. Attachment C is only used when there is a real property disposition; if there is a disposition, please contact your program officer for further instructions. Both forms can be found here: <https://grants.gov/forms/forms-repository/post-award-reporting-forms>.

LEAs or other subgrantees that have a renovation, major remodeling, construction, or real property project must submit annually to the SEA an SF-429-A [Real Property Status Report](#) form for each parcel of real property acquired or improved by Federal funds.

SEAs or other grantees or subgrantees that have received prior approval for a renovation, major remodeling, construction or a real property project directly from the Department must annually submit an SF-429-A [Real Property Status Report](#) form to the Department for each parcel of real property improved by Federal funds.

The SEA or other grantee may establish a deadline for the LEA or other subgrantee to submit the forms. For any SEA or other grantee project in which the grantee received direct approval from the Department, the forms must be submitted by January 28, 2025.

2. Question: Do grantees and subgrantees still need to report after the period of performance?

Answer: Yes. An SEA or grantee, LEA or other subgrantee must annually submit an SF-429 report for a renovation, major remodeling, construction, or real property project for at least the first 15 years after a project is funded and for which a Federal Interest is retained, to the SEA or other grantee. An SEA or grantee that has received prior approval directly from the Department for construction or real property for which a Federal Interest is retained must annually submit an SF-429 [report](#) to the Department.

The Department will consider this submission the grantees’ annual submission for purposes of [2 CFR § 200.330](#).

If for any reason the property acquired or improved by Federal grant funds will be sold, transferred, or otherwise modified, the SEA or other State grantee or subgrantee first must

contact the Department for appropriate disposition instructions of the Federal interest. Grantees or subgrantees may be required to reimburse the Department for the Federal interest in the property if the property will not be used in the way that was supported originally by Federal grant funds.

3.a. Question: How do we calculate the amount of Federal interest?

Answer: In general, the amount of Federal interest is calculated using the definition of “Federal interest” in [2 CFR § 200.1](#):

“For purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

- (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; 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.”

Please note that the calculation must be based on the value of the improvement to the current fair market value of the building, not the building’s original cost.

3.b. Will the value of the Federal interest change over time, especially as the useful life of the acquisition or improvement expires?

Answer: Yes. The market value of COVID-19 supported renovations/alterations will change over time and this will be reflected as annual reports are filed. The Department will work with grantees to recognize the changing market value of improvements and other activities made by the grantee or property owner of the facility.