

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 lease-hold interest.

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

(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.