

Section 222.176 What Definitions Apply to This Program?

The proposed regulations define the term “emergency” to include health and safety conditions that present an immediate threat to the building’s occupants, as well as those conditions that will present health and safety hazards in the very near future, including accessibility for the disabled as part of a larger project. The proposed definition also provides examples of some of the types of health and safety conditions that the Secretary anticipates the emergency grants will address.

The proposed provisions clarify that “modernization” grants must be used to repair, renovate, alter, or extend facilities in order to support a contemporary educational program that is consistent with the laws, standards, or common practices in the LEA’s State. Since the Secretary anticipates that the need for these grants will exceed the amount of available funds, this provision clarifies that the Secretary does not intend for these grants to be used to fund facility modernization projects that exceed a State’s standards.

Sections 222.177–182 Eligibility

The statutory eligibility criteria for emergency and modernization grants are complex and are further complicated by funding provisions that specify, in descending priority order, two emergency grant and two modernization grant eligibility categories. These proposed regulations provide details on each of the four eligibility categories so that applicants can determine under which funding priority their application will be considered. This will be particularly important for applicants to understand, because the statute mandates that the Secretary must first use available funds for applications in the first priority. After all eligible applications in the first priority have been funded, the Secretary considers applications in the second priority, followed by the third and fourth priorities in descending order.

Sections 222.183–187 How To Apply for a Grant

The statute does not specify a complete application process; the proposed regulations provide for an application that requests objective and subjective information that will be used to rank applicants. An applicant will also be required to agree to certain assurances that are contained in the application package. In addition, the Secretary, before making final award decisions, will request detailed data on the funds that the highest-ranked

applicants have available to contribute to their proposed projects. The proposed regulations specify that the applications must be based on student and fiscal data from the preceding fiscal year, unless satisfactory fiscal data from that year are not available.

The regulations clarify that an applicant may submit more than one emergency repair application for the same facility, and may also submit both modernization and emergency repair applications for the same facility. Emergency repair grant applications must include an independent certification of the health and safety concerns, signed by a local building inspector, a licensed architect, or a licensed engineer.

Sections 222.188–194 How Grants Are Made

The Department will review applications separately among the four funding priorities. Field readers will review the applications by category, based on the selection criteria and any other applicable factors that will be detailed in an application notice published in the **Federal Register**. Field readers will also evaluate and make recommendations to the Department as to whether emergency repair applications submitted under the first and second priorities represent valid health and safety considerations under the program definitions. Similarly, when field readers review modernization applications under the third and fourth priorities, they will evaluate and make recommendations to the Department as to whether those applications represent valid modernization considerations under the program definitions.

Prior to making final funding decisions and determining final grant awards, the Secretary may verify certain data with applicants’ States and will also assess available resources for all highly ranked grantees, limitations on the grant awards for certain grantee categories, and the availability of in-kind contributions. The Secretary considers as available to fund the project the closing capital fund balance identified in the LEA’s audited financial report for the prior year, not including \$100,000 or ten percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater.

As detailed in the “Eligibility” portion of the proposed regulations, the Secretary will generally fund all eligible applications in the first application priority group before funding applications in each of the next three groups. This will vary if the remaining

funds are insufficient to fund another project in the highest-priority group but adequate to fund a project in the next priority group. The next-ranked applicants in the higher-priority group will be offered the opportunity to accept funds for a portion of their projects before lower-priority projects are funded. If they accept the lower grant amount, they would forfeit the right to have their applications carried over and considered for funding in the next year’s competition. However, they could submit new applications for the next year for the remainder of their projects. If they do not accept the lower grant award, the application is carried over and considered in the next year’s competition.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them