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

AUTHORITY: 20 U.S.C. 7701–7714, unless otherwise noted.

SOURCE: 67 FR 53682, Aug. 16, 2002, 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 Impact Aid funds.

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

§222.171 In general, what LEAs may be eligible for Discretionary Construction grants?

(a) Applications for these grants are considered in four funding priority categories. Complete information about the specific requirements for each priority is 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 reside on Federal property and 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 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 reside on Federal property and 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;

(v) Meet specific numeric requirements regarding bonding capacity; or

(vi) Be eligible for funding under section 8002 of the Act (payments for Federal property).

(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) Except as provided in paragraph (c) of this section, an LEA may use emergency grant funds received under this program only to repair, renovate, or alter a public elementary or secondary school facility used for free public education to ensure the health, safety, and well-being of students and personnel.

(b) Except as provided in paragraph (c) of this section, an LEA may use modernization grant funds received under this program only to repair, renovate, alter, or extend 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 a 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 school facilities is permitted, emergency and modernization funds may be used for new school facilities that are used for free public education. This may include 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, machinery, and initial utility connections.

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

§ 222.173 What activities are prohibited?

The Secretary does not fund the following activities under this grant:

(a) Improvements on facilities for which the LEA does not have full title or other interest.

(b) 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.

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

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

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

§ 222.174 What other 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. Examples follow:

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 above 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