

## USED Releases Guidance on Federal Property Interest

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Last week, ED [issued guidance](#) regarding the government-wide recording and reporting requirements for ESSER projects related to the acquisition or improvement of facilities with federal funds. Of importance, **every LEA that utilized ESSER funding for renovation, major remodeling, construction or the purchasing of real property using federal funding must report a federal property interest regardless of the amount of the federal interest.** This requirement to report a federal property interest does not apply to “moveable equipment” which may include HVAC equipment, mobile classrooms, building furniture, and other similar items. The deadline to do this is January 28, 2025.

In the guidance, ED states that OMB regulations require recipients of federal funding to 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. Federal interest is loosely defined as “the percentage of Federal participation in the total cost of the real property, equipment, or supplies and the 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.” In addition to completing a Real Property Status Report to the SEA, the guidance details that ED must also record a federal property interest for when the following conditions are met:

1. If the LEA had a renovation, major remodeling, construction, or real property project using \$1 million or more in Federal funds must record the notice of Federal interest.
2. If the federal interest in a project is 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).
3. If 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.

It’s important to recognize that there are two separate requirements discussed in this guidance. The requirement to report a real property interest due to a renovation, major remodeling, construction, or real property project must be submitted annually to the SEA in the form of a Real Property Status Report applicable to each parcel of real property acquired or improved by Federal funds. There is no minimum amount for this threshold to warrant a report. The recording of a federal property interest would likely be triggered if the

renovation or construction work totaled 1 million, although there are other reasons why ED would likely require this as explained above.

It is disappointing that information about the reporting and recording of federal property interest was not better explained in earlier ESSER guidance as this additional, lengthy reporting may prove difficult for low-capacity LEAs.