

## MEMORANDUM NO. 2021-124

**TO:** School District Superintendents  
District Business Managers  
District Grant Managers

**FROM:** Shelley Hamel, Chief Academic Officer

**DATE:** October 18, 2021

**SUBJECT:** ESSER Funds Prior Written Approval for Construction Projects

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# ESSER FUNDS PRIOR WRITTEN APPROVAL FOR CONSTRUCTION PROJECTS

The Wyoming Department of Education (WDE) acknowledges there has been confusion on the process for issuing written prior approval to subrecipients that intend to use Federal grant funds for construction projects or capital improvements. This memo is intended to clarify the process for districts.

### Process for Prior Written Approval

The Uniform Guidance at [2 CFR § 200.407](#) requires prior written approval from either the Department or the State (Governor or SEA, as applicable) for certain costs, such as the purchase of real property; equipment and other capital expenditures; entertainment costs; and travel costs. For additional information, refer to questions B-6 and B-7 from the [U.S. Education Department FAQs](#).

To obtain prior approval from the WDE, fill out the ESSER Construction Form found [here](#) and on the [Covid Resources](#) page of the WDE website. This will initiate the approval process. Even if your CARES ESSER I or ESSER II application has been approved, you must seek approval from the WDE for a relevant expenditure (even if you have already expended the funds).

### USDE Letter to New Hampshire

On June 15, 2021, USED issued a letter to the Commissioner of the New Hampshire Department of Education, clarifying several areas of the construction guidance outlined on the next page:

- The prior approval process is not specified in regulation or guidance and is determined by the SEA.
- Prior approval is not required on minor remodeling.
- Prior approval is not required before LEA bidding is advertised, **and can come at any point in the project timeline determined by the SEA, but no later than the point of reimbursement.**

### **Definitions and Federal Citations**

**2 CFR §200.439(b)(1)**, "Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the federal awarding agency or pass-through entity."

ESEA section **7013(3), 20 U.S.C. § 7713(3)**. The Impact Aid program statute defines "construction" as "(A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt service for such activities."

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*For more information, contact Danielle Netzer, COVID Response Funds Grant Manager at 307-369-6404 or [danielle.netzer@wyo.gov](mailto:danielle.netzer@wyo.gov).*