

 **Recording a Federal Interest in Real Property Improved with Federal Grant Dollars**

The United States Department of Education has issued [guidance and guidelines](https://www.ed.gov/sites/ed/files/2024/03/DCL-and-Guidance-Recording-and-Reporting-Federal-Interest.pdf) for recording a Notice of Federal Interest (NFI) in real property (buildings and land) that have been improved using federal funds in the county registry of deeds where the property is located. This applies to all renovation, major remodeling, and real property projects.

USED’s reasoning for the public recording of this interest:

*In general, these longstanding requirements help ensure that a facility can continue to be used for educational purposes after a grant has ended; establish the level of public investment in the facility that may be recouped if the property is subsequently transferred to private ownership; and promotes nondiscrimination, including accessibility, while the property is used for a grant’s educational purpose.*

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| Which projects require a notice of federal interest (NFI) to be recorded? |
| * When federal funds used for the improvement total at least $1,000,000.
	+ Note that the $1,000,000 is cumulative, by property rather than by individual project or grant.
	+ For example, if your district paid $150,000 for new windows with ESSER III funds and $900,000 for HVAC replacement with IVAQ funds, both in the same middle school, your district would need to file a Notice of Federal Interest.
* For federal interests of < $1,000,000, no recording is required, but documentation of the federal interest should be retained by the district and reported on annually to DESE.
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| How is the federal interest calculated for the NFI? |
| * The definition of federal interest for purposes of this calculation is found at [2 C.F.R. 200.1](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.1(Federal%20interest)).
* Multiply the percentage of the federal funds contributing to the project/improvement/equipment relative to the total cost of the project/improvement/equipment by the increase to the *current* fair market value of the property due to the improvement(s). If grant funds were used for the acquisition of real property, the calculation would be the percentage of federal funds relative to the total purchase price multiplied by the current fair market value of the property acquired.
	+ *For example: If a district used $1,000,000 of its ESSER III grant toward replacement of flooring throughout the high school that cost $1,500,000 in total, the federal interest would be 66.6% ($1M/$1.5M) of the value of the improvement. If the value of the high school due to this improvement increased by $1,500,000, then this district would record a federal interest of $1,000,000 (66.6% x $1,500,000).*
	+ *Another example: If your district builds a new storage facility for $1,700,000, paid for 100% with ESSER II and III funds, and the fair market value of the real estate improved by the new building goes up $1,800,000, the district would record a federal interest of $1,800,000 (100% x $1,800,000 (improved value of the property)).*
	+ *Another example: Your district builds a playground and outdoor learning space at its elementary school costing $2,000,000, using $350,000 of ESSER II funds and $700,000 of ESSER III funds (total of $1,050,000 in federal funds) and $950,000 in local funds. The fair market value of the property as a result of the playground/learning space improvement goes up by $2,200,000. The total federal interest of the improvement would be 52.5% (ESSER II & III funds ($1,050,000)/Total project cost ($2,000,000)). The federal interest would be $1,155,000 (52.5% of $2,200,000 (the increase in the value of the property due to the improvement)).*

 * Note that districts are not required to have a property valuation to assess current fair market value and the value of the improvement. A reasonable estimate is acceptable and improved value may equate to the cost of the improvement. Note that estimates must be current – the original cost of the building is not acceptable (unless the building is being acquired with federal funds).
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| Where should the federal interest be recorded? |
| * Recording the NFI should be made with the Registry of Deeds (the “official real property records for the jurisdiction”) in the c*ounty where the property is located.*
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| What information should the NFI contain and what other requirements must be observed? |
| In addition to the amount of the federal interest, the notice should include: * The Registry of Deeds requirements for recording a notice of interest should be observed.
* The federal guidance generally prescribes 6 requirements for an NFI:
* The federal P/R Award number
	+ For ESSER I (Fund Code 113): S425D200025
	+ For ESSER II (Fund Code 115): S425D210025
	+ For ESSER III (Fund Code 119): S425U210025
	+ For Improving Ventilation and Air Quality (IVAQ) (Fund Code 0209): CFDA # 21.027
* Description of project(s) clearly describing the approved, grant-funded work (construction, renovation, equipment, etc.).
* Full legal description of the property – preferably the description contained in the deed. Note: The physical address of the property is not, by itself, sufficient.
* Signature of owner of the property or an authorized representative.
* The NFI needs to be notarized with an embossed seal.
* The NFI needs to be properly recorded in the correct jurisdiction.
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| What is the deadline for recording the NFI? |
| * The current deadline for recording the NFI with your Registry of Deeds is now for any eligible project or acquisition that has been completed. For those projects with a liquidation extension or still within the liquidation period, the recording should be accomplished within 90 days of project completion.
* Note that the federal interest in the property exists independent of recording the NFI.
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| How does the NFI reflect any decrease in the value of the federal interest over time? |
| * While the recording does not change, the district can reflect any changes in its annual reporting to DESE. The United States Department of Education advises: “The market value of COVID-19 supported renovations/alterations will change over time and this will be reflected as annual reports are filed. The Department will work with grantees to recognize the changing market value of improvements and other activities made by the grantee or property owner of the facility” (see guidance linked above at Question 3b).
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Contact your [federal grants liaison](https://www.doe.mass.edu/federalgrants/liaisons.xlsx) with any questions about recording your NFI.

*The contents of this document do not have the force and effect of law and are not meant to bind the public in any way; they are intended only to summarize existing requirements under the law and/or agency policies. This guidance should not be used as a substitute for districts’ analysis of their circumstances against federal, state, and local procurement requirements and seeking advice of counsel.*