



ESSER Capital Improvement: Davis-Bacon and Reporting and Recording

September 12, 2024



Upcoming Deadlines

Reporting and Recording of Capital Improvement due September 30, 2024.

- These reports are mandatory for capital project in which federal funds were used for ANY portion of the project. This includes any ESSER funding stream, such as ESSER I, ESSER I SPED, ESSER II, ESSER II SPED, ESSER II True Up, ESSER III, or ESSER III True Up.
- For the purpose of this requirement, Capital expenditures means expenditures to “acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.”

2 CFR 200.1- Definitions

- Some examples of federal expenditures that require capital improvement reporting include: HVAC, bottle fillers, windows, remodeling, plumbing and fixtures, building wiring, and site improvements, etc..



Review and Reporting

- Each LEA should review all actual district ESSER expenditures and the Construction Requirements Overview to determine if any expenditures fall under Capital Improvement regulations. Please review the [Reporting and Recording Federal Interest in Property FAQ](#) on the www.ed.gov site.
- Districts that determine no federal funds were used for any portion of Capital expenditures will submit the [Capital Improvement Attestation Form](#). The completed form may be emailed to esser@ksde.gov. Please submit by September 30, 2024.



https://www.ksde.gov/Portals/0/ECSETS/Announcements/ESSER_Capital_Improvement_Attestation.pdf





Capital Improvement Attestation

District Name

USD Number

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR 200.1)

- This may include, but is not limited to, expenses related to window replacements, HVAC, fountain and bottle filling fixtures, bathroom fixtures, building rewiring, classroom or entryway remodeling, etc..
- The use of any federal education aid for any portion of a capital expenditure project must be reported to the KSDE and the interest in the property recorded.
- Even projects in which federal education funds are used to pay for only a small portion of the overall project, or used to only acquire the materials that are then installed using labor services paid with other funds are subject to **ALL** federal capital improvement reporting and recording requirements.

As the authorized representative of the school district listed above, I affirm that no federal education funds have been expended for any portion of district capital expenditures, as of the date this attestation.

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Printed Name and Title of District Superintendent or Authorized Representative

Signature of District Superintendent or Authorized Representative

Date

Kansas leads the world in the success of each student

Revised 9/9/2024



By 9/30/2024 All Districts Must:

DISTRICTS WITH FEDERAL CAPITAL EXPENDITURES:

- Submit reporting documentation documentation to esser@ksde.gov.
- Email esser@ksde.gov to request up to a 60 day extension that includes the date by which it will be provided.

DISTRICTS WITH NO FEDERAL CAPITAL EXPENDITURES:

- Submit Attestation Form to esser@ksde.gov certifying that no capital improvements including any related expense were paid with federal funds.





Davis Bacon Reporting

When Does Davis Bacon Apply?

- As a result of 20 USC 1232b Labor, Davis-Bacon prevailing wage requirements apply to any construction, repair, or alteration (including painting) contracts over \$2,000 using laborers and mechanics financed by Federal education funds.
- <https://www.dol.gov/agencies/whd/government-contracts/construction>



LEA Responsibilities

- An LEA that is using Federal education funds to support a construction project must include all applicable contract clauses found in 29 CFR 5.5.
- The LEAs must also maintain contractor certified payroll records and submit these records to the State.



KSDE's Responsibilities

- KSDE must collect from the LEA and monitor the contractor's certified payroll records.
- The State must make sure subgrantees are meeting all applicable requirements that are detailed in 34 CFR §§ 75.600-75.618, as well as in OMB Standard Forms 424B and D (Assurances for Non Construction and Construction Programs), including the assurances relating to labor standards; flood hazards; historic preservation; health and safety; energy conservation; and coastal barrier resources.



Documenting Weekly Compliance

- The contractor or subcontractor must submit to the nonfederal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls)



Documenting Weekly Compliance (cont.)

- This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (OMB No. 1235-0008).
- <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>
- <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification>
- <https://www.dol.gov/agencies/whd/government-contracts/construction>



PAYROLL

For contractor's optional use; see instructions at dol.gov/agencies/whd/forms/wh347

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐		ADDRESS		OMB No. 1235-0008 Expires 09/30/2026							
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.					
(1)	(2)	(3)	(4) DAY AND DATE	(5)	(6)	(7)	(8) DEDUCTIONS	(9)			
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF MINORING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS	NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)



Submitting Documentation to KSDE

- Submit to essser@ksde.gov
- LEAs are required to submit all weekly reports for any covered projects.



Non-compliance and Omissions

- If an SEA finds that an LEA did not include the applicable contract clauses found in 29 CFR 5.5 for construction, repair, or alteration (including painting) contracts over \$2,000 using laborers and mechanics financed by Federal education funds and the project is still open, the LEA must incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed.



Non-compliance and Omissions (cont.)

- If an SEA determines that an LEA did not include Davis-Bacon clauses or wage determinations in a contract, but the prevailing wages rates were paid, the Department of Labor may be able to waive retroactive application of the remaining, unmet requirements (such as certified payrolls) where payment of the prevailing wage rate is otherwise sufficiently documented



Non-compliance and Omissions (continued)

- If an LEA is unable to seek a waiver from the Department of Labor or amend the contracts to comply with the Davis-Bacon requirements, the LEA might consider an accounting adjustment and substitute non-Federal funds to pay for these contracts.





Reporting and Recording Capital Improvements

Property Trust Relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

2 CFR 200.316



Recording Flexibility

- While all grantees and subgrantees must continue to meet OMB real property reporting requirements, the Department generally will exempt grantees and subgrantees that use less than \$1 million in COVID-19 relief funds for a renovation, major remodeling, construction, or other real property project (such as a land acquisition) from recording the Federal interest.
- Reporting requirements still apply and a Federal Interest still remains, even if the project is less than \$1 million.



Recording Deadline

All grantees and subgrantees that have a renovation, major remodeling, construction, or real property project of \$1 million or more in funds from these programs must record all NFIs by January 28, 2025.



Federal Interest Exists Even When Not Recorded

- Regardless, note that the Federal interest exists in improved real property even if the Federal interest is not recorded.
- For renovation, major remodeling, construction, or real property projects where the Federal funds are less than \$1 million, grantees and subgrantees must still maintain adequate documentation regarding protection of all Federal interest. This includes timely filing the annual real property reporting forms referenced below and maintaining the associated records.
- Grantees and subgrantees must follow the real property disposition requirements.



Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

2 CFR 200.330



Annual Real Property Reports

- SF-429 Real Property Status Report (Cover Page)
 - https://apply07.grants.gov/apply/forms/sample/SF429_2_0-V2.0.pdf
- SF-429-A Real Property Status Report ATTACHMENT A (General Reporting)
 - <https://apply07.grants.gov/apply/forms/sample/SF429A-V1.0.pdf>
- SF-429-C Real Property Status Report ATTACHMENT C (Disposition or Encumbrance Request)
 - <https://apply07.grants.gov/apply/forms/sample/SF429C-V1.0.pdf>
- <https://grants.gov/forms/forms-repository/post-award-reporting-forms>

NOTE: Users should download and open the files from the latest version of Adobe and “Enable All Features” to avoid an error.



Submitting the Annual Report

- KSDE is determining the most effective way to collect these reports and will provide additional instructions in the near future.
- LEAs should begin reviewing and completing the reports now in order to be prepared for a timely submission.





Questions

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For more information, please visit:



<https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Federal-Disaster-and-Pandemic-Relief>



Please direct questions to:

esser@ksde.gov

The Kansas State Department of Education does not discriminate on the basis of race, color, religion, national origin, sex, disability or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 S.W. Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.



Report Fraud Wasted And Abuse



STOP CARES ACT FRAUD

Theft of CARES Act funding for schools robs our students.

Be on the lookout for signs of fraud, waste, and abuse:

- Financial conflicts of interest
- Suspicious or unverifiable vendors
- Missing school property or records
- Defective or low-quality products and services
- Irregularities in contract awards or procedures
- Nonexistent students

If you think something is amiss, it may well be. Report your suspicions to the Office of Inspector General and we'll evaluate for fraud, waste, and abuse!



We can provide confidentiality.

**IF YOU SUSPECT ANY WRONGDOING,
REPORT IT AT [OIGHotline.ed.gov](https://www2.ed.gov/about/offices/list/oig/hotline.html)
or call 1-800-MIS-USED**

Elementary and Secondary School Emergency Relief Fund as authorized by the CARES Act 2020

Office of Inspector General Hotline | U.S. Department of Education
400 Maryland Ave. SW | Washington, DC 20202-1500

IF YOU SUSPECT ANY WRONGDOING, REPORT IT:

Call 1-800-MIS-USED

Or Visit

<https://www2.ed.gov/about/offices/list/oig/hotline.html>

