



FOUNDERS

David Gottfried
Michael Italiano
S. Richard Fedrizzi

2101 L St. NW
Suite 600
Washington, DC 20037
202-828-7422
usgbc.org

February 26, 2024

Department of Education

Subject: Education Department General Administrative Regulations and
Related Regulatory Provisions
Docket ID ED-2023-OPEPD-0110:

Dear Secretary Cardona,

The [U.S. Green Building Council](#) (USGBC) and our [Center for Green Schools](#) appreciate the Department undertaking these much-needed updates to the EDGAR regulations, and respectfully offer the attached comments.

USGBC is a nonprofit organization working to build healthy, resilient, and equitable green buildings and communities for all. We are best known for the Leadership in Energy & Environmental Design (LEED) green building certification system. In addition to LEED, we offer education, credentials, events, communications, and policy advocacy activities to support high-performance buildings that save energy and water, support occupant health and productivity, reduce impacts on the climate, and incorporate resilience. The Center for Green Schools at the U.S. Green Building Council is a global leader in advancing green schools and providing the resources needed to create sustainable, healthy, resilient, and equitable learning environments.

Please contact me at ebeardsley@usgbc.org or (571)-970-7916 if we may be of assistance or provide clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Beardsley", with a long, sweeping flourish extending to the right.

Elizabeth Beardsley
Senior Policy Counsel
USGBC
ebeardsley@usgbc.org

cc: Anisa Heming, Director, Center for Green Schools

Comments

1. We concur with the need to update the EDGAR regulations.

We appreciate the effort undertaken by the Department to update the regulations. The regulations are significantly outdated, and we agree with the need for the update.

2. We recommend the Department, in undertaking revisions to the construction provisions starting at 34 CFR 76.600, to emphasize approaches that facilitate healthy, climate-forward green school facilities.

The Department, in undertaking revisions to the construction provisions starting at 34 CFR 76.600, should emphasize approaches that facilitate healthy, climate-forward green school facilities. Such approaches could include clarifying permissibility of use of [green school strategies](#), all-electric schools, and net zero schools. The Department could consider clarifying the ability of grantees to also use, as appropriate, public-private partnerships such as energy saving performance contracts on projects funded under this section. In addition, opportunities to advance equitable school facilities and to address historical disadvantages in under-resourced communities should be prioritized; providing high-quality, healthy school buildings and grounds to such communities is one approach, another could be to ensure funded schools are resilient and can serve as community shelters if needed. There are also opportunities to enhance student and community education about energy efficiency and green practices through school construction. Below, we provide specific recommendations towards these approaches.

3. We urge further revisions to Section § 75.602 Planning the construction to ensure school construction projects utilize modern technology, materials, and building science, and to align school construction projects using Federal dollars align with U.S. Government goals for climate pollution reduction, mitigation, and resilience.

The language in this section, particularly (a)(1), could be read by some districts as limiting goals and outcomes for new and rehabilitated schools. Continuing to use this language could inadvertently “chill” the use of modern building science, healthy



materials, and innovations. For example, in virtually every state or region, the “facilities of a similar type” are likely to be code-built or even (in the case of older schools) below-code. The regulations should encourage or at least allow grantees to pursue innovative projects such as all-electric and net zero energy schools. We urge the Department to modify and clarify this section to encourage the use of green practices.

Additionally, with respect to project budgets, the Department should encourage the use of life cycle cost analysis (see, e.g., this [resource](#) from the Whole Building Design Guide), rather than overly focus on first costs; considering life cycle costs also helps provide more durable facilities requiring fewer costly renovations and replacements over time. The regulations also should require budgets to include costs of commissioning (see, e.g., [guidance](#) from the Whole Building Design Guide) and training district staff on building systems. Finally, we recommend allowing grantees to use a very small fraction of funds to create learning opportunities related to the construction project. (See, e.g., “[School buildings designed as ‘teaching green’ can lead to better environmental education.](#)”)

We suggest the following revisions (additions in underline, deletions in strikeout):

§ 75.602 Planning the construction.

(a) In planning the construction project, a grantee—

(1) Must ensure that the design is functional, economical, and not elaborate in design or extravagant in the use of finish materials compared with facilities of a similar type constructed in the State or other applicable geographic area.

(2) May consider excellence of architecture and design and inclusion of works of art. A grantee must not spend more than 1 percent of the cost of the project on works of art.

(3) May make reasonable provision,



consistent with the other uses to be made of the construction, for areas that are adaptable for artistic and other cultural activities.

(4) May design a school to be all-electric or net zero energy.

(5) May use strategies and practices for green schools.

(b) In developing the proposed budget for the construction project, a grantee—

(1) Must ensure that sufficient funds are available to meet any non-Federal share of the cost of the construction project.

(2) Must include sufficient funds for commissioning of energy, HVAC, and water systems and to train school personnel in the proper operation of such building systems.

(3) For new construction and major rehabilitation projects, must consider life cycle cost analysis for major design decisions to the extent possible.

(24) May budget for reasonable and predictable contingency costs consistent with 2 CFR 200.433

(5) May budget for school and community education about the construction project including its energy, environmental, and health features and benefits. Such budget may not exceed 0.5% of the cost of the project.

- 4. We support the proposed revisions to 75.616 Energy conservation and agree with adding reference to ASHRAE Standard 90.1-2022. We recommend further revision to provide for the use of future editions of the standard and to require all-electric and net zero energy evaluations during the early design stage.**

We agree with the revisions and the emphasis in energy conservation and recommend further language to require evaluation of costs and benefits for all-electric and net zero energy schools in the early design stage before a design gets locked in. ASHRAE



Standard 90.1 is revised on a three-year cycle, which leads to gradual improvements in energy efficiency. We suggest the regulation provide for future improvements in the standard, to apply to projects starting two years after publication.

We suggest the following revisions:

§ 75.616 Energy conservation.

(a) To the extent practicable, a grantee must design and construct facilities to maximize the efficient use of energy.

A grantee of a new construction school building or a major rehabilitation of a school building must evaluate life-cycle costs and benefits of highly efficient, all-electric systems or a net zero energy project in the early design phase.

And add at the end of 75.616:

(d) Projects commencing design after January 1, 2028 shall use the version of ASHRAE Standard 90.1 most recently published for use.

5. We recommend strengthening the protection that appears intended by Section 75.612 Avoidance of flood hazards.

Schools are a critical part of community infrastructure and may in some cases serve as shelters. School construction projects should take steps to avoid flood hazards, and where a site with potential flood risk is used, to mitigate against risks to life and property. To that end, we suggest clarifying what is required for project design in the flood section as follows:

§ 75.612 Avoidance of flood hazards.

In planning the construction or real property project, a grantee must, in accordance with Executive Order 11988 of May 24, 1977 (3 CFR, 1978 Comp., pp. 117–120):

(a) Evaluate flood hazards in



connection with the construction; ~~and~~

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction,

(c) Mitigate flood hazards through design such as elevating systems and first floor elevations above flood level plus freeboard, and

(d) Summarize remaining flood risks in a memorandum.

6. We recommend strengthening Section 75.618 to make clear that school districts may determine and implement health strategies appropriate to their population.

In addition to regulatory standards, which provide a minimum and may by nature lag science, other standards and best practices can foster school environments that support health and wellness. (For example, see the Center for Green Schools [School Indoor Air Quality Fact Sheets](#) and the [Green Schools for Health: A Project Team's Roadmap to the LEED Health Process](#)). We recommend the following further revision:

§ 75.618 Safety and health standards.

In planning for and designing a construction project,

(a) a grantee must comply with the following:

(a1) The standards under the Occupational Safety and Health Act of 1970 (See 29 CFR part 1910); and

(b2) State and local codes, to the extent that they are more stringent; and

(b) a grantee may use additional standards and best practices to support health and wellbeing of students and staff.

