

SECTION 2-1: FUNDING SOURCES FOR FACILITIES PROJECTS

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2-1-00 POLICY

The purpose of this section is to provide policy and guidelines for using funds appropriately for facilities projects and preparing facility project budgets for inclusion in budget submissions. This policy applies to all Departmental facilities activities, including facilities owned or leased by HHS, or operated by HHS or on behalf of HHS. These policies and guidelines apply unless inconsistent with an agency's appropriations act or other applicable law. Any exceptions to the provisions of this section must be approved in writing by the Office for Facilities Management and Policy (OFMP), Office of the Secretary (OS).

A. MAJOR FACILITY PROGRAM ACTIVITIES

The HHS facilities program generally includes all activities necessary to provide land, structures, and equipment (whether owned or leased) required by a Department Operating Division (OPDIV) to carry out its mission. The facilities program includes construction, improvements, repairs, maintenance, and temporary construction. Congress requires a specific appropriation for purpose of the erection, repair or furnishing of public buildings, 41 USC§ 12. Congress has also authorized appropriations for health care facilities for the benefit of Indian tribes, 25 USC§ 13. An appropriation act satisfying the requirements of 41 USC§ 12 or which is authorized by 25 USC§ 13 could include funds for several of the major facilities program activities as defined in this section, such as "Construction," "Improvements" and "Repair-by-Replacement."

These definitions and all other definitions in this Manual must be read consistently with all other similar relevant definitions set forth in any other potentially relevant and applicable laws, regulations and similar government-wide requirements.

1. Construction - The erection of a building, structure or facility, including the installation of equipment, site preparation, landscaping, associated roads, parking, environmental mitigation and utilities, which provides space not previously available. It includes freestanding structures, additional wings or floors, enclosed courtyards or entryways, and any other means to provide usable program space that did not previously exist (excluding temporary facilities). Construction projects are capitalized in accordance with the accounting principles of the Federal Accounting Standards Advisory Board (FASAB).
2. Improvements (Renovations/Alterations) - Any betterment or change to an existing property to allow its continued or more efficient use within its designated purpose (Renovation), or for use for a different purpose or function (Alteration). Building improvements also include improvements to or upgrading of primary mechanical, electrical, or other building systems, and site improvements not associated with construction projects. Improvements typically increase the useful life of a facility and are capitalized against the existing property in accordance with the accounting principles of the FASAB. Improvements do not include the addition of wings, floors, or other increases to usable program space; such projects constitute construction as defined in paragraph 1 above. The only added space, which may be construed as a building improvement

rather than construction, would be new stairwells, elevator towers, pipe chases, etc., not providing usable program space. If, however, an increase in usable program space is incidental to the overall improvement project, the OPDIV may request a waiver from classification as construction. After reviewing the project's Facility Project Approval Agreement (FPAA), OFMP may waive the classification of the project as construction on a case-by-case basis.

3. Minor Renovations - Renovations that are directly related to the installation of special-purpose equipment, as well as related design and inspection services. These renovations may include extending utility services, providing suitable safety and environmental conditions for proper operations, and making structural changes such as cutting walls and floors, and new partitions, provided such improvements are proximately incident to the installation, operation and use of special purpose equipment and necessary to conduct the functions of the program(s). Renovations could include the removal of interior walls and partitions and their replacement or rearrangement to accommodate the installation of special purpose equipment. Minor renovation projects do not change the value of the underlying asset or increase the useful life of the facility. Projects that change the permitted use or function of a space or add program space are not classified as minor renovations. Some examples of the types of work that would not be considered Minor Renovations are: the addition of wings, floors, or other increases in useable program space, which would constitute construction as defined in paragraph 1 above. Projects that changes the use or function of a space or add program space would also not be classified as Minor Renovations: for example, a laboratory that is converted to an office or an office converted to a laboratory, even if the office had previously been a laboratory, each of which would be classified as changes in use or function and therefore not Minor Renovations. However, an Institute or Center may make minor renovations to a laboratory that was previously used by another Institute or Center and still have those renovations considered being Minor Renovations. Sequential or concurrent projects in the same building will be evaluated as a single project.
4. Repair - The restoration of a failed or failing primary building system or real property component to a condition that restores its effective use for its designated purpose. A repair does not increase the underlying value of an existing facility and is typically not capitalized. An example of a primary building system would be the structural foundation and frame, domestic water system, or building HVAC system; a real property component would be a piece of the primary building system such as a roofing system, central chiller/boiler, generator, or elevators. A failed or failing primary building system or real property component may be the result of action of the elements, fire, explosion, storm and/or other disasters, and by use near to or beyond its expected useful life or technical obsolescence. Because of its nature or extent, this deterioration or damage cannot be corrected through maintenance. Like maintenance, repairs may require environmental documentation. Repairs may include reconstruction or replacement of a primary building system or real property component, but reconstruction or replacement of constituent parts or materials is classified as maintenance. Repairs do not include the addition of wings, floors, or other increases in usable program space; such projects constitute construction as defined on paragraph 1 above.
 - a. Repair-by-Replacement - Repair-by-Replacement is used to correct deficiencies in an existing building by replacing the building when it is more advantageous than using those funds to renovate the building. A building may be replaced under Repair-by-Replacement if the cost of documented eligible repairs is 75% of the cost to replace that building with a new equivalent building meeting current code and design standards. The OPDIV shall establish a process and document their analysis to support Repair-by-Replacement. Buildings replaced under Repair-by-Replacement must be demolished because, by definition, they are not worth renovating. Replacement buildings are not intended to house more programs or staff than the space they are replacing. However, a replacement building may be slightly larger to support

improved functionality or to be compatible with current standard sizes, such as a pre-manufactured modular building. The FPAA for a Repair-by-Replacement project shall include documentation supporting the replacement in the project justification.

5. Maintenance - Work to keep a property, facility, and/or building system or component in a continuously usable state or condition. Maintenance may include inspection, cleaning, calibration, and adjustment, lubrication and replacement of constituent parts, materials and/or sub-assemblies worn, broken, damaged or otherwise compromised. Maintenance includes routine recurring work, which is incidental to everyday operations, as well as preventive work, which is programmed at scheduled intervals, and predictive work, which is indicated by analysis. Maintenance also includes the upkeep or replacement of landscaping, and the upkeep of utility distribution infrastructure systems. Examples of routine maintenance would be pavement coatings or overlays less than 7.62 cm or 3 inches, roof coatings or resurfacing. Replacement of roof systems, including finish roofing and pavers, insulation, sheathing and/or underlayment is repair not maintenance. Like repairs, maintenance may require environmental documentation.
6. Temporary Construction - Construction to provide a building, structure, or facility needed for a limited period of time to meet an urgent and compelling agency need. Such facilities should be of a clearly temporary nature to meet a temporary need. The temporary need is demonstrated by a facility requirement for less than 5 years or the long-term need has been programmed in the OPDIV Facilities Plan, but may not have been funded. Generally, structures in this category would have a lower initial cost, higher annual maintenance and utility cost and a shorter usable life than non-temporary structures of the same approximate size. Exterior enhancements solely to provide the appearance of permanence should not to be included in temporary construction.
7. Equipment –
 - a. Fixed Equipment –

Fixed, built-in, attached, and installed equipment normally included as part of the construction contract and capitalized as facility costs.

 - (1) Building Equipment - Building equipment is a permanently fixed, built-in part of a building or structure, the removal of which would generally require repairs or improvements to place the area in which it was located in a usable condition. Building equipment includes building service items, such as elevators; utility systems, such as heating, electrical and other utilities; main feeds coming into the building for telephone service; walk-in refrigerators; vaults; built-in autoclaves; generators; etc.
 - (2) Attached or Installed Equipment - Attached or installed equipment is a semi-permanent part of a building or structure, the removal of which terminates a utility or equipment service without affecting or damaging the integrity of a building, structure or utility system. Drinking fountains, laboratory casework and sinks, etc., are examples of installed or attached items.
 - b. Moveable Equipment –
 - (1) Major Moveable Equipment - This category consists of items having a useful life of 5 years or more. Major moveable equipment is typically capitalized. Moveable equipment does not require attachment to the building or utility service, other than that provided by an electrical plug or disconnect fitting. The placement of moveable equipment needs to

be addressed in facilities programming such that electrical load and receptacles, structural requirements such as vibration, floor loads and magnetic interference, etc., have been considered. Examples include cabling for telephone, computer networks and security systems, chairs, beds, bassinets, desk, microscopes, portable whirlpool units, exercise bars, refrigerators, linen carts, and systems and modular furniture.

- (2) Minor Moveable Equipment - This category consists of items having a useful life of less than 5 years. These items are of relatively small cost and size and lend themselves to on-site storage for replacement of lost or worn out equipment. Examples include washbasins, bedpans, pipettes, and surgical instruments.

c. Special-Purpose Equipment –

Special purpose equipment is technical, medical, or scientific equipment that is needed to operate a laboratory, a hospital, a clinic, a clinical research patient care unit, an animal care facility, or is specific to a single purpose and not generally suitable for other purposes. Examples of such equipment include incubators, electric ovens, sterilizers, vacuum and pressure pumps, centrifuges, water baths, cabinets, cupboards and shelving for laboratory supplies, workbenches for microscopes, sinks for mixing of chemicals and disposing of same, movable apparatus for laboratory animals, and electrical and gas appliances. Special-purpose equipment may be classified as either fixed or moveable equipment. A special purpose laboratory in some cases may be considered as special purpose equipment. A special purpose laboratory, in the context of special purpose equipment, could include a fully prefabricated structure meant to be installed within an existing building space. It is not a freestanding building with independent utilities and services.

2-1-10 PROCEDURES

A. FUNDING SOURCES

There are several key appropriation laws that apply to facilities programs. A primary statutory provision is 31 USC§ 1301, which provides that “appropriations shall be applied only to the objects for which the appropriations were made except as provided by law.” Another relevant statutory provision is 41 USC§ 12, which provides that “No contract shall be entered into for the erection, repair, or furnishing of any public building or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for that specific purpose.” A third significant statute is 41 USC§ 14, which imposes the following limitation on acquisition of land, “No land shall be purchased on account of the United States, except under a law authorizing such purpose.” Additional statutes relevant for the planning, design, construction and renovation of health care facilities for the benefit of Indian tribes are 25 USC§ 13 and 25 USC§ 1631. In addition, appropriations law provides that Federal appropriated funds may not be used to make permanent improvements to non-Federal real property in the absence of statutory authority.

Each of the major land-holding OPDIVs receives a Building and Facilities (B&F) appropriation, or a B&F earmark within an OPDIV’s appropriation, most often as a lump sum for construction and several associated purposes. (Hereinafter when we refer to B&F appropriation it should also be read to include a B&F earmark within an OPDIV’s appropriation.) Sometimes specific construction projects are identified as earmarks in the appropriation, more often they are included in the legislative history of an appropriations act or an OPDIV’s Congressional Justification. The actual obligation of these funds must be consistent with the appropriation act and any other applicable statutes or regulations. As a matter of policy, obligation of funds must also be consistent with the President’s budget request, as amended by

Congressional appropriation reports or HHS B&F budget process documents. There are circumstances in which the funds must be reprogrammed in accordance with Congressional policy. OPDIVs should work with their budget office in this regard. Each OPDIV's annual operating appropriation may also be a source of funds for facilities program activities such as maintenance.

1. Buildings and Facilities (B&F) Funding – Except for IHS, each OPDIV in preparing its budget submission in the HHS budget request for the Buildings and Facilities (B&F) appropriation identifies two broad categories: (1) Construction and (2) Repair and Improvements (R&I). For IHS Health Care Facilities Construction (HCFC) is synonymous with Construction while Repair and Improvements are incorporated into the IHS category labeled Maintenance and Improvements (M&I). The exact language of each of the several HHS Buildings and Facilities (B&F) appropriations determines the flexibility an OPDIV may have to apply specific sources of funds to a project. As a general rule, unless there is a limitation in the appropriations act or some other statutory limitation, funds within a “lump sum” appropriation may be used for any item covered by that lump sum appropriations act. HHS requires that contracted design, construction inspection and construction management services for construction projects be funded from the B&F funding for that project. HHS also requires that the OPDIV use the same type of funds for contracted design, construction inspection, and construction management services as the OPDIV uses for the actual repair, maintenance and improvement projects. OPDIV annual operating funds are not to be used for contracted design, inspection or management services of any project funded from the B&F appropriations.
 - a. Construction (IHS Health Care Facilities Construction) - Construction projects as defined in 2-1-00A.1 shall be designed and constructed with funds specifically identified for that purpose in either an OPDIV's B&F appropriation or in an earmark in the OPDIV's appropriation. As a matter of policy, the use of such funds must also be consistent with the HHS B&F budget process documents (starting with an OPDIV's Preliminary Budget Submission to DHHS through the Congressional Justification to the Appropriations Committee), or a Congressional reprogramming action as defined in Section 1-2. These projects must be identified in the OPDIV's Annual Facilities Plan. If the project is not earmarked in the appropriation, the OPDIV shall identify the project by name and program amount within the appropriate OPDIV apportionment request. Because these projects add program space not previously available, they are typically NOT funded from Repair & Improvements or Maintenance & Improvements funds which are budgeted by the OPDIVs, with the exception of those funds that have been budgeted for Repair-by Replacement.

Land Purchases - Undeveloped land acquisitions are generally for construction projects. All acquisitions of land require specific statutory authority, 41 USC§ 14, and specifically designated funding in an OPDIV's appropriation and/or budget. All land acquisitions must be submitted to and approved by the HHS Capital Investment Review Board. See Section 4-2 of this manual for developed land acquisitions.

Equipment - All fixed equipment installed as part of the original construction project shall be funded from the B&F appropriation. It is noted that some equipment may qualify as both fixed equipment and special-purpose equipment. If this equipment is included as part of the original construction process, it is to be considered fixed equipment and funded from the B&F account. If this equipment is added to an existing facility, it is to be considered special-purpose equipment and funded from operating funds. Moveable equipment may be funded from the B&F appropriation only when specifically authorized by law. Otherwise, purchases of moveable equipment are funded from operating funds. Equipment in leased facilities is to be funded using operating funds or with funds specifically identified by statute for

equipment. Also, as noted previously, Federal appropriations law requires that Federal appropriated funds may not be used to make permanent improvements to non-Federal property in the absence of statutory authority.

- b. Repair & Improvements (except for IHS) – Funds identified for Repair & Improvements (R&I) in an OPDIV’s B&F appropriation or budget may be used for all improvements and repairs as defined in 2-1-00A.2. and 2-1-00A.4. above, as well as associated equipment defined in 2-1-00A.7.

Improvements (Renovations or Alterations) - Improvement projects not Construction or Minor Renovations, as defined above, shall be funded from the B&F appropriations from funds identified in an OPDIV’s budget lump sum R&I funds. OPDIVs shall submit improvement projects costing \$1,000,000 or more to the OFMP and those costing \$10,000,000 or more to the Capital Investment Review Board. These projects must be identified in the OPDIV’s Annual Facilities Plan. If the project is not earmarked in the OPDIV’s appropriation, the OPDIV shall identify the project by name and program amount within the appropriate OPDIV apportionment request.

Repairs – Repairs, including Repair-by-Replacement, shall be funded from the B&F appropriation from funds either specifically identified in an OPDIV’s B&F appropriation or in its budget as lump sum R&I funds. OPDIVs shall submit repair projects costing \$3,000,000 or more to OFMP for prior written approval and costing \$10,000,000 or more to the Capital Investment Review Board. These projects must be identified in the OPDIV’s Annual Facilities Plan.

Maintenance - OPDIVs shall not use funds identified for R&I in either an OPDIV’s appropriation or in an OPDIV budget for maintenance, as defined in 2-1-00A.3., with the exception of IHS because IHS’ B&F appropriation typically includes maintenance within it.

- c. Maintenance & Improvements (IHS only) – Funds identified for Maintenance & Improvements (M&I) in the IHS budget can be used for all improvements, maintenance and repairs as defined in 2-1-00A.2. through 2-1-00A.4. above.

Improvements (Renovations or Alterations) – IHS shall fund improvement projects that are not Construction or Minor Renovations, as defined above, from its B&F appropriation using funds identified in the IHS budget as lump sum M&I funds. IHS shall submit improvement projects costing \$1,000,000 or more to the OFMP and those costing \$10,000,000 or more to the Capital Investment Review Board. These projects must be identified in the IHS Annual Facilities Plan. If a project is not earmarked in the IHS appropriation, IHS shall identify the project by name and program amount within the appropriate IHS apportionment request.

Maintenance – IHS shall fund maintenance projects, as defined above, from B&F appropriation using funds identified in the IHS budget as lump sum M&I funds. Routine maintenance projects, such as maintenance contracts for paving sealing, roof recoating, or mechanical equipment calibration, are not subject to the \$3,000,000 threshold requiring ASA approval under the Capital Investment Review Board policy.

Repairs– IHS shall fund repairs, as defined above, including Repair-by-Replacement, from its B&F appropriation using funds identified in the IHS budget as lump sum M&I funds. IHS shall submit repair projects costing \$3,000,000 or more to OFMP for prior written approval

and those costing \$10,000,000 or more to the Capital Investment Review Board. These projects must be identified in the IHS Annual Facilities Plan.

Equipment - The IHS budget includes a category of funds for medical equipment replacement in existing facilities, separate from the lump sum M&I funds. Medical equipment for existing facilities shall be funded from this budget line, unless included in a specific improvement or repair project.

2. OPDIV Annual Operating Appropriations - In addition to salaries, supplies, and other repetitive annual OPDIV operating expenses, these appropriations are to be used for certain facilities related work as listed below.

a. Maintenance – Unless the appropriation act provides otherwise, OPDIVs (except IHS) are to perform maintenance of existing facilities, as defined in 2-1-00A.3., including related engineering and inspection services, with annual operating funds allocated for maintenance of facilities in the HHS operating budget request.

Maintenance projects are not subject to the \$3,000,000 threshold requiring ASA approval under the Capital Investment Review Board policy, e.g., maintenance contracts for paving sealing, roof recoating, mechanical equipment calibration, etc.

b. Lease Facilities – HHS has delegated authority to some of the OPDIVs to enter into non-capital leases. Non-capital leases are typically funded with operating funds. B&F funds are not to be used for fit-out or permanent improvements of such leased facilities. However, equipment that would not be considered a permanent improvement to the leased property must be funded from annual operating appropriations unless the OPDIV has a specific appropriation for such equipment. Note, per OMB Circular A-11 capital leases require scoring of the entire cost of the lease in the year signed and shall be included in the OPDIV's budget submission.

c. Minor Renovations - Operating funds may be used for minor renovations to install special purpose equipment as defined above, as well as related design and inspection services, unless appropriated funds for the special purpose equipment and its installation are specifically provided by statute. Operating funds may only be used for those physical changes directly incident to and required to accommodate special purpose equipment. Operating funds may not be used, however, for costs of more general improvements, such as alteration of existing laboratories, conversion of existing office space into laboratories, or other structural or physical changes to a facility which are not directly related to the installation of a specific item of special purpose equipment, 16 Comp. Gen 160 and 816 (1936), Comp. Gen. B-170587-O.M. (October 21, 1970) and Comp. Gen. B-164031(2) (November 24, 1972). A FPAA must be submitted to OFMP for prior written approval on any minor renovations projects with a total project cost \$1,000,000 or greater, including the special purpose equipment.

d. Planning and Programming Documents - Operating funds may be used to develop Programs of Requirements, Program Justification Documents, NEPA documentation, planning and programming documents and/or other studies, and concept drawings necessary to establish project scope and funding requirements, unless B&F funds have been specifically identified for these purposes in an appropriations act, the HHS B&F budget process documents (starting with an OPDIV's Preliminary Budget Submission to DHHS through the Congressional

Justification to the Appropriations Committee), or a Congressional reprogramming action as defined in Section 1-2,.

- e. Temporary Construction - Operating funds may be used for temporary buildings (as defined above) to support urgent, short-term needs. Written approval (through submittal of a FPAA) from OFMP must be obtained before using operating funds for any temporary construction exceeding 134 square meters.
- f. Equipment - Operating funds are used for the purchase of moveable equipment except when funding from the B&F appropriation has been specifically authorized by law. Operating funds are used for the purchase of special purpose equipment unless the equipment meets the definition of fixed equipment. For new facilities only, special purpose equipment that can be classified as fixed equipment per Section 2-1-00A.7.a. shall be funded from the B&F construction appropriation.
- g. Activation and Relocation Costs – Operating funds are used for activation and relocation costs such as telecommunications cabling, moving, etc. except where B&F funds have been specifically identified for these purposes in an OPDIV’s appropriation act, the HHS B&F budget process documents (starting with an OPDIV’s Preliminary Budget Submission to DHHS through the Congressional Justification to the Appropriations Committee), or a Congressional reprogramming action as defined in Section 1-2.

3. Other Sources of Funds

- a. Quarters Rental Return Funds - In accordance with P.L. 98-473, quarters rental return funds (i.e., funds collected as rent) are to be used for the operation and maintenance of quarters. These funds should be used prior to using appropriated funds.
- b. Medicare/Medicaid Reimbursements - Appropriation language normally permits the Indian Health Service (IHS) to utilize Medicare/Medicaid reimbursements to perform construction, repairs and improvements to meet accreditation requirements of the Joint Commission on Accreditation of Healthcare Organizations, exclusive of planning, design, and construction of new facilities or major renovation projects. The use of Medicare/Medicaid reimbursement for projects \$1,000,000 or more or for planning, design and construction of buildings requires congressional authorization. IHS will submit these projects for congressional authorization after providing notification to OFMP and the Department’s Budget Office.
- c. Gift Funds – The acceptance and use of gifts of money received from external sources shall be in accordance with the Section 231 of the Public Health Service Act, as codified in 42 USC§ 238. OFMP shall be notified of any project(s) that are being constructed using gift funds or gifts of real property in any form.
- d. Other – Appropriations language may from time to time authorize the use of other sources of funds for facilities construction. In such cases, the OPDIV shall refer to the language of that authorizing legislation in the FPAA documentation to ensure the appropriate use of the funds.

B. FACILITY PROJECT BUDGETS

- 1. General - Unless described otherwise in the justification for the HHS Budget request, a facility project budget is assumed to include all component costs necessary to design, construct, inspect and equip new or improved space, and as detailed in the Facility Project Approval Agreement

(FPAA). On all construction, improvements, minor renovations and repair projects requiring a FPAA, a breakdown of project costs shall be provided in the FPAA. See Section 2- 3 for detailed instructions on preparing a FPAA and identifying project costs. This is a routine requirement for major new research and health care facilities because the length of the design phase generally equals or exceeds one year and construction funds would typically be proposed one or more years after the request for planning and/or design funds. On design-build projects where both design and construction will commence in the same year, and the overall project duration is 18 months or less, there may not be a need for separate budget requests.

2. Planning Phase – The planning phase includes all costs associated with preparation of planning and programming documents and any special studies necessary to adequately define the scope, budget and schedule of the project.
3. Design Phase - The design phase includes the estimated cost of design services plus any necessary site survey, geotechnical surveys, National Environmental Policy Act documentation, historic preservation studies, archeological studies and other special studies and/or associated costs not included in the planning process.
4. Construction Phase - The construction phase includes the estimated cost of the construction contract (with appropriate escalation factors applied), fixed equipment, construction management and inspection fees, and an appropriate construction contingency allowance. HHS policy stipulates that full funding of the entire construction phase component must be requested in the OPDIV budget submission. Projects planned, designed and constructed in discrete complete phases may be funded over multiple years. Partial funding, which could result in an incomplete facility should additional funds not be appropriated, is not permitted unless funds for phased construction are identified and approved in the appropriation act, the HHS B&F budget process documents, or a Congressional reprogramming action.
5. Equipment - Costs for all fixed equipment are included in the construction phase component of the facility project budget and funded from the B&F appropriation. The FPAA shall clearly identify the source of funding for all moveable equipment required to make the facility fully operational.

C. MORATORIUM ON NEW CONSTRUCTION

Upon completion of construction on a construction project meeting the definition of 2-1-00 A.1., no new construction work can begin in the facility until at least 365 days after beneficial occupancy to avoid the appearance of incrementing or increase in scope.

2-1-30 REPORTING REQUIREMENTS

By September 30th of each year, the OPDIVs shall provide an annual report to OFMP summarizing all minor renovation projects that do not require an FPAA (less than \$1,000,000 total project cost) funded with operating funds including total project cost, type of work, gross area, dates of project start and completion, building, and user.