

## § 222.9

### § 222.9 What records must a local educational agency maintain?

Except as otherwise provided in § 222.10—

(a) An LEA must maintain adequate written records to support the amount of payment it received under the Act for any fiscal year;

(b) On request, the LEA must make its records available to the Secretary for the purpose of examination or audit; and

(c) Each applicant must submit such reports and information as the Secretary may require to determine the amount that the applicant may be paid under the Act.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 1232f, 7702, 7703, 7704, 7706)

### § 222.10 How long must a local educational agency retain records?

An LEA must retain the records described in § 222.9 until the later of—

(a) Three years after the last payment for a fiscal year; or

(b) If the records have been questioned on Federal audit or review, until the question is finally resolved and any necessary adjustments to payments have been made.

(Authority: 20 U.S.C. 1232f, 7702, 7703, 7704, 7706)

### § 222.11 How does the Secretary recover overpayments?

Except as otherwise provided in §§ 222.12–222.18, the Secretary adjusts for and recovers overpayments as follows:

(a) If the Secretary determines that an LEA has received a payment in excess of what it should have received under the Act and this part, the Secretary deducts the amount of the overpayment from subsequent payments for which the LEA is eligible under the Act.

(b)(1) If the LEA is not eligible for subsequent payments under the Act, the LEA must promptly refund the amount of the overpayment to the Secretary.

(2) If the LEA does not promptly repay the amount of the overpayment or promptly enter into a repayment

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agreement with the Secretary, the Secretary may use the procedures in 34 CFR part 30 to offset that amount against payments from other Department programs or, under the circumstances permitted in part 30, to request that another agency offset the debt.

(Authority: 20 U.S.C. 1226a–1, 7702, 7703, 7706, 7712)

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35412, July 1, 1997]

### § 222.12 What overpayments are eligible for forgiveness under section 8012 of the Act?

(a) The Secretary considers as eligible for forgiveness under section 8012 of the Act (“eligible overpayment”) any overpayment amount that is more than an LEA was eligible to receive for a particular fiscal year under Public Law 81–874, Public Law 81–815, or the Act (except for the types of overpayments listed in § 222.13), and that—

(1) Remains owing on or after July 31, 1997;

(2) Is the subject of a written request for forgiveness filed by the LEA before July 31, 1997; or

(3) Is the subject of a pending, timely written request for an administrative hearing or reconsideration, and has not previously been reviewed under §§ 222.12–222.18.

(b) The Secretary applies §§ 222.14–222.18 in forgiving, in whole or part, an LEA’s obligation to repay an eligible overpayment that resulted from error either by the LEA or the Secretary.

(Authority: 20 U.S.C. 7712)

[62 FR 35412, July 1, 1997]

### § 222.13 What overpayments are not eligible for forgiveness under section 8012 of the Act?

The Secretary does not consider the following overpayments to be eligible for forgiveness under section 8012 of the Act:

(a) Any overpayment under section 7 of Public Law 81–874 or section 16 of Public Law 81–815.

(b) An amount received by an LEA, as determined under section 8003(g) of the Act (payments to LEAs for certain

federally connected children with severe disabilities, implemented in subpart F of this part), that exceeds the LEA's maximum basic support payment under section 8003(b) of the Act.

(c) Any overpayment caused by an LEA's failure to expend or account for funds properly in accordance with the following laws and regulations:

(1) Section 8003(d) of the Act (implemented in subpart D of this part) or section 3(d)(2)(C) of Public Law 81-874 for certain federally connected children with disabilities.

(2) Section 8003(g) of the Act.

(Authority: 20 U.S.C. 7712)

[62 FR 35413, July 1, 1997]

**§ 222.14 What requirements must a local educational agency meet for an eligible overpayment to be forgiven in whole or part?**

The Secretary forgives an eligible overpayment, in whole or part as described in § 222.18, if—

(a) An LEA submits to the Department's Impact Aid Program office a written request for forgiveness by the later of—

(1) Thirty days from the LEA's initial receipt of a written notice of the overpayment; or

(2) September 2, 1997;

(b) The LEA submits to the Department's Impact Aid Program office the information and documentation described in § 222.16 by the deadlines described in paragraph (a) of this section, or other time limit established in writing by the Secretary due to lack of availability of the information and documentation; and

(c) The Secretary determines under § 222.17 that—

(1) In the case either of an LEA's or the Department's error, repayment of the LEA's total eligible overpayments will result in an undue financial hardship on the LEA and seriously harm the LEA's educational program; or

(2) In the case of the Department's error, determined on a case-by-case basis, repayment would be manifestly unjust ("manifestly unjust repayment exception").

[62 FR 35413, July 1, 1997]

**§ 222.15 How are the filing deadlines affected by requests for other forms of relief?**

Unless the Secretary (or the Secretary's delegatee) extends the applicable time limit in writing—

(a) A request for forgiveness of an overpayment under § 222.14 does not extend the time within which an applicant must file a request for an administrative hearing under § 222.151; and

(b) A request for an administrative hearing under § 222.151, or for reconsideration under § 222.152, does not extend the time within which an applicant must file a request for forgiveness under § 222.14.

(Authority: 20 U.S.C. 7712)

[62 FR 35413, July 1, 1997]

**§ 222.16 What information and documentation must an LEA submit for an eligible overpayment to be considered for forgiveness?**

(a) Every LEA requesting forgiveness must submit, within the time limits established under § 222.14(b), the following information and documentation for the fiscal year immediately preceding the date of the forgiveness request ("preceding fiscal year"):

(1) A copy of the LEA's annual financial report to the State.

(2) The LEA's local real property tax rate for current expenditure purposes, as described in § 222.17(b).

(3) The average local real property tax rate of all LEAs in the State.

(4) The average per pupil expenditure (APPE) of the LEA, calculated by dividing the LEA's aggregate current expenditures by the total number of children in average daily attendance for whom the LEA provided a free public education.

(5) The APPE of the State, as defined in section 8013 of the ESEA.

(b) An LEA requesting forgiveness under § 222.14(c)(2) (manifestly unjust repayment exception), or § 222.17(a)(3) (no present or prospective ability to repay), also must submit written information and documentation in specific support of its forgiveness request under those provisions within the time limits established under § 222.14(b).

(Authority: 20 U.S.C. 7712)

[62 FR 35413, July 1, 1997]