

Subpart A—General

§ 222.1 What is the scope of this part?

The regulations in this part govern the provision of financial assistance under title VIII of the Elementary and Secondary Education Act of 1965 (ESEA) to local educational agencies (LEAs) in areas affected by Federal activities.

(Authority: 20 U.S.C. 7701-7714)

§ 222.2 What definitions apply to this part?

(a)(1) The following terms defined in section 8013 of the Act apply to this part:

- Armed forces
- Average per-pupil expenditure
- Construction
- Current expenditures
- Indian lands
- Local contribution percentage
- Low-rent housing
- School facilities

(2) The following term defined in § 222.30 applies to this part:

Free public education

(b) The following terms defined in section 14101 of the ESEA (General Provisions) also apply to this part:

- Average daily attendance (ADA)
- Child
- County
- Department
- Outlying area
- Parent
- Secretary
- State
- State educational agency (SEA)

(c) In addition, the following definitions apply to this part:

Act means title VIII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

Applicant means any LEA that files an application for financial assistance under section 8002, 8003, or 8006 of the Act and the regulations in this part implementing those provisions. Except as provided in section 8005(d)(4) of the Act, an SEA may be an applicant for assistance under section 8003 only if the SEA directly operates and maintains facilities for providing free public

education for the children it claims in its application.

(Authority: 20 U.S.C. 7705 and 7713(9))

Application means a complete and signed application in the form approved by the Secretary, filed by an applicant.

(Authority: 20 U.S.C. 7705)

Federally connected children means children described in sections 8003(a)(1) and 8010(c)(2) of the Act.

(Authority: 20 U.S.C. 7703(a)(1) and 7710(c)(2))

Federal property. (1) The term means—

- (i) Federal property described in section 8013; and
- (ii) Ships that are owned by the United States and whose home ports are located upon Federal property described in this definition.

(2) Notwithstanding paragraph (1) of this definition, for the purpose of section 8002 the term does not include—

- (i) Any real property that the United States does not own in fee simple, except for Indian lands described in section 8013(7), and transferred property described in section 8002(d); and
- (ii) Real property described in section 8002(c) (real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933).

(Authority: 20 U.S.C. 7702(c) and (d), and 7713(5) and (7))

Fiscally dependent LEA means an LEA that does not have the final authority to determine the amount of revenue to be raised from local sources for current expenditure purposes.

(Authority: 20 U.S.C. 7702(b)(2) and 7703(f))

Fiscally independent LEA means an LEA that has the final authority to determine the amount of revenue to be raised from local sources for current expenditure purposes within the limits established by State law.

(Authority: 20 U.S.C. 7702(b)(2) and 7703(f))

Local educational agency (LEA) is defined in section 8013(9). Except for an SEA qualifying under section 8005(d)(4), the term includes an SEA only so long as—

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(1) The SEA directly operates and maintains the facilities for providing free public education for the children it claims in its application;

(2) The children claimed by the SEA actually are attending those State-operated facilities; and

(3) The SEA does not, through a tuition arrangement, contract, or by any other means, pay another entity to operate and maintain facilities for those children.

(Authority: 20 U.S.C. 7705(d)(4) and 7713(9))

Local real property tax rate for current expenditure purposes. (1) For a fiscally independent LEA, the term means the entire tax levied on real property within the LEA, if all but a *de minimus* amount of the total proceeds from the tax levy are available to that LEA for current expenditures (as defined in section 8013).

(2) For a fiscally dependent LEA, the term means the following:

(i) The entire tax levied by the general government on real property if all but a *de minimus* amount of the total proceeds from that tax levy are available to the LEA for current expenditures (as defined in section 8013);

(ii) That portion of a local real property tax rate designated by the general government for current expenditure purposes (as defined in section 8013); or

(iii) If no real property tax levied by the general government meets the criteria in paragraphs (2)(i) or (ii) of this definition, an imputed tax rate that the Secretary determines by—

(A) Dividing the total local real property tax revenue available for current expenditures of the general government by the total revenue from all local sources available for current expenditures of the general government;

(B) Multiplying the figure obtained in paragraph (2)(iii)(A) of this definition by the revenue received by the LEA for current expenditures (as defined in section 8013) from the general government; and

(C) Dividing the figure obtained in paragraph (2)(iii)(B) of this definition by the total current actual assessed value of all real property in the district.

(3) The term does not include any portion of a tax or revenue that is re-

stricted to or dedicated for any specific purpose other than current expenditures (as defined in section 8013).

(Authority: 20 U.S.C. 7702(b)(2) and 7703(f))

Membership means the following:

(1)(i) The definition given to the term by State law; or

(ii) If State law does not define the term, the number of children listed on an LEA's current enrollment records on its survey date(s).

(2) The term includes children for whom the applicant is responsible for providing a free public education, but who are attending schools other than those operated by the applicant under a tuition arrangement described in paragraph (4) of the definition of "free public education" in § 222.30.

(3) The term does not include children who—

(i) Have never attended classes in schools of the LEA or of another educational entity with which the LEA has a tuition arrangement;

(ii) Have permanently left the LEA;

(iii) Otherwise have become ineligible to attend classes there; or

(iv) Attend the schools of the applicant LEA under a tuition arrangement with another LEA that is responsible for providing them a free public education.

(Authority: 20 U.S.C. 7703 and 8801(1))

Parent employed on Federal property.

(1) The term means the following:

(i) An employee of the Federal Government who reports to work on, or whose place of work is located on, Federal property.

(ii) A person not employed by the Federal Government but who spends more than 50 percent of his or her working time on Federal property (whether as an employee or self-employed) when engaged in farming, grazing, lumbering, mining, or other operations that are authorized by the Federal Government, through a lease or other arrangement, to be carried out entirely or partly on Federal property.

(iii) A proportion, to be determined by the Secretary, based on persons working on commingled Federal and non-Federal properties other than those persons covered under paragraph (1)(ii) of this definition.

(2) The term does not include a person who reports to work at a work station not on Federal property but spends more than 50 percent of his working time on Federal property providing services to operations or activities authorized to be carried out on Federal property.

(Authority: 20 U.S.C. 7701 and 7703)

Real property. (1) The term means—

- (i) Land; and
- (ii) Improvements (such as buildings and appurtenances to those buildings, railroad lines, utility lines, pipelines, and other permanent fixtures), except as provided in paragraph (2).

(2) The term does not include—

- (i) Improvements that are classified as personal property under State law; or
- (ii) Equipment and movable machinery, such as motor vehicles, movable house trailers, farm machinery, rolling railroad stock, and floating dry docks, unless that equipment or movable machinery is classified as real property or subject to local real property taxation under State law.

(Authority: 20 U.S.C. 7702 and 7713(5))

Revenues derived from local sources. (1) The term means—

- (i) Tax funds derived from real estate; and
- (ii) Other taxes or receipts that are received from the county, and any other local tax or miscellaneous receipts.

(2)(i) For the purpose of paragraph (1)(i) of this definition, the term *tax funds derived from real estate* means—

(A) Locally received funds that are derived from local taxation of real property;

(B) Tax funds that are received on account of Wherry-Spence housing projects (12 U.S.C. 1702 *et seq.*) located on private property; and

(C) All local real property tax funds that are received from either the county or the State, serving as a collecting agency, and that are returned to the LEA for expenditure by that agency.

(ii) The term does not include—

(A) Any payments under this Act or the Johnson-O'Malley Act (25 U.S.C. 452);

(B) Tax payments that are received on account of Wherry-Spence housing

projects located on federally owned property; or

(C) Local real property tax funds that are received by the State and distributed to LEAs on a per-pupil or formula basis.

(Authority: 20 U.S.C. 7713(11))

State aid means any contribution, no repayment of which is expected, made by a State to or on behalf of an LEA within the State for the support of free public education.

(Authority: 20 U.S.C. 7703)

Uniformed services means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

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

(Authority: 20 U.S.C. 7703(a)(1); 37 U.S.C. 101)

§ 222.3 How does a local educational agency apply for assistance under section 8002 or 8003 of the Act?

An LEA must meet the following application requirements to be considered for a payment under section 8002 or 8003:

(a) Except as provided in paragraphs (b) and (d) of this section, on or before January 31 of the fiscal year for which the LEA seeks assistance under section 8002, or the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8003, the LEA must—

(1) File with the Secretary a complete and signed application for payment under section 8002 or 8003; and

(2) Certify to the Secretary that it will file, and file, a copy of the application referred to in paragraph (a) of this section with its SEA.

(b)(1) If any of the following events that give rise to eligibility for payment occur after the filing deadline in paragraph (a)(1) of this section, an LEA must file a complete and signed application within the time limits required by paragraph (b)(2) of this section:

(i) The United States Government initiates or reactivates a Federal activity, or acquires real property.

(ii) The United States Congress enacts new legislation.