

## § 222.17

### § 222.17 How does the Secretary determine undue financial hardship and serious harm to a local educational agency's educational program?

(a) The Secretary determines that repayment of an eligible overpayment will result in undue financial hardship on an LEA and seriously harm its educational program if the LEA meets the requirements in paragraph (a)(1), (2), or (3) of this section.

(1) An LEA other than an LEA described in paragraphs (a)(2) and (3) of this section meets the requirements of paragraph (a) of this section if—

(i) The LEA's eligible overpayments on the date of its request total at least \$10,000;

(ii) The LEA's local real property tax rate for current expenditure purposes, for the preceding fiscal year, is equal to or higher than the State average local real property tax rate for that preceding fiscal year; and

(iii) The LEA's average per pupil expenditure (APPE) (as described in § 222.16(a)(4)) for the preceding fiscal year is lower than the State APPE (as described in § 222.16(a)(5)) for that preceding fiscal year.

(2) The following LEAs qualify under paragraph (a) of this section if they meet the requirements in paragraph (a)(1)(i) of this section and their APPE (as described in § 222.16(a)(4)) for the preceding fiscal year does not exceed 125 percent of the State APPE (as described in § 222.16(a)(5)) for that preceding fiscal year:

(i) An LEA with boundaries that are the same as a Federal military installation.

(ii) Other LEAs with no local real property tax revenues, or with minimal local real property tax revenues per pupil due to substantial amounts of Federal property in the LEA as compared with the average amount of those revenues per pupil for all LEAs in the State.

(3) An LEA qualifies under paragraph (a) of this section if neither the successor nor the predecessor LEA has the present or prospective ability to repay the eligible overpayment.

(b) The Secretary uses the following methods to determine a tax rate for the purposes of paragraph (a)(1)(ii) of this section:

## 34 CFR Ch. II (7-1-02 Edition)

(1) If an LEA is fiscally independent, the Secretary uses actual tax rates if all the real property in the taxing jurisdiction of the LEA is assessed at the same percentage of true value. In the alternative, the Secretary computes a tax rate for fiscally independent LEAs by using the methods described in §§ 222.67—222.69.

(2) If an LEA is fiscally dependent, the Secretary imputes a tax rate using the method described in § 222.70(b).

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

[62 FR 35413, July 1, 1997]

### § 222.18 What amount does the Secretary forgive?

For an LEA that meets the requirements of § 222.14(a) (timely filed forgiveness request) and § 222.14(b) (timely filed information and documentation), the Secretary forgives an eligible overpayment as follows:

(a) *Forgiveness in whole.* The Secretary forgives the eligible overpayment in whole if the Secretary determines that the LEA meets—

(1) The requirements of § 222.17 (undue financial hardship), and the LEA's current expenditure closing balance for the LEA's fiscal year immediately preceding the date of its forgiveness request ("preceding fiscal year") is ten percent or less of its total current expenditures (TCE) for that year; or

(2) The manifestly unjust repayment exception in § 222.14(c)(2).

(b) *Forgiveness in part.* (1) The Secretary forgives the eligible overpayment in part if the Secretary determines that the LEA meets the requirements of § 222.17 (undue financial hardship), and the LEA's preceding fiscal year's current expenditure closing balance is more than ten percent of its TCE for that year.

(2) For an eligible overpayment that is forgiven in part, the Secretary—

(i) Requires the LEA to repay the amount by which the LEA's preceding fiscal year's current expenditure closing balance exceeded ten percent of its preceding fiscal year's TCE ("calculated repayment amount"); and

(ii) Forgives the difference between the calculated repayment amount and the LEA's total overpayments.

(3) For the purposes of this section, “current expenditure closing balance” means an LEA’s closing balance before any revocable transfers to non-current expenditure accounts, such as capital outlay or debt service accounts.

*Example:* An LEA that timely requests forgiveness has two overpayments of which portions remain owing on the date of its request—one of \$200,000 and one of \$300,000. Its preceding fiscal year’s closing balance is \$250,000 (before a revocable transfer to a capital outlay or debt service account); and 10 percent of its TCE for the preceding fiscal year is \$150,000.

The Secretary calculates the amount that the LEA must repay by determining the amount by which the preceding fiscal year’s closing balance exceeds 10 percent of the preceding year’s TCE. This calculation is made by subtracting 10 percent of the LEA’s TCE (\$150,000) from the closing balance (\$250,000), resulting in a difference of \$100,000 that the LEA must repay. The Secretary then totals the eligible overpayment amounts (\$200,000 + \$300,000), resulting in a total amount of \$500,000. The Secretary subtracts the calculated repayment amount (\$100,000) from the total of the two overpayment balances (\$500,000), resulting in \$400,000 that the Secretary forgives.

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

[62 FR 35414, July 1, 1997]

**§ 222.19 What other statutes and regulations apply to this part?**

(a) The following Federal statutes and regulations on nondiscrimination apply to assistance under this part:

(1) The provisions of title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) (prohibition of discrimination on the basis of race, color or national origin), and the implementing regulations (34 CFR part 100).

(Authority: 42 U.S.C. 2000d—2000d-4)

(2) The provisions of title IX of the Education Amendments of 1972 (Pub. L. 92-318) (prohibition of discrimination on the basis of sex), and the implementing regulations (34 CFR part 106).

(Authority: 20 U.S.C. 1681-1683)

(3) The provisions of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) (prohibition of discrimination on the basis of disability), and the implementing regulations (34 CFR part 104).

(Authority: 29 U.S.C. 794)

(4) The provisions of title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336) (prohibition of discrimination on basis of disability), and any implementing regulations.

(Authority: 42 U.S.C. 12101-12213)

(5) The provisions of the Age Discrimination Act of 1975 (Pub. L. 94-135) (prohibition of age discrimination), and any implementing regulations.

(Authority: 42 U.S.C. 6101)

(b) The following Education Department General Administrative Regulations (EDGAR):

(1) Subparts A, E, F, and §§ 75.900 and 75.910 of 34 CFR part 75 (Direct Grant Programs) for payments under sections 8003(d) (payments for federally connected children with disabilities), 8007 (construction), and 8008 (school facilities), except for the following:

(i) Section 75.603 does not apply to payments under section 8007 (construction) or section 8008 (school facilities).

(ii) Section 75.605 does not apply to payments under section 8007 (construction).

(iii) Sections 75.600-602, 75.604, and 75.606-617 apply to payments under section 8007 (construction) only to the extent that funds received under that section are used for major renovations or to construct new school facilities.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), for payments under sections 8003(d) (payments for federally connected children with disabilities), 8007 (construction), and 8008 (school facilities).

(4) 34 CFR part 82 (New Restrictions on Lobbying).

(5) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants)).

(Authority: 20 U.S.C. 1221e-3)

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