

§ 222.33

basis of any count described in §§ 222.33 through 222.35.

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

(Authority: 20 U.S.C. 7703 and 7705)

**§ 222.33 When must an applicant make its first or only membership count?**

(a)(1) An applicant must select a day in the current school year as the survey date for making the first membership count, which must be no earlier than the fourth day of the regular school year and on or before January 31.

(2) The applicant must use the same survey date for all schools in the LEA.

(b) As of the survey date, the applicant must—

(1) Count the membership of its federally connected children; and

(2) Count the total membership of its children—both federally connected and non-federally connected.

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(Authority: 20 U.S.C. 7703, 7705, 7706)

**§ 222.34 If an applicant makes a second membership count, when must that count be made?**

(a)(1) The applicant may, but is not required to, make a second count of membership.

(2) If the applicant chooses to make a second count of membership, the applicant must select a day after January 31, but no later than May 14, as the survey date for making the second membership count, and make that count in accordance with § 222.33(b).

(3) The applicant must use the same survey date for the second membership count for all schools in the LEA.

(b) The applicant may use the information obtained from a second membership count to amend its application for assistance as described in § 222.5(b)(1).

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(Authority: 20 U.S.C. 7703 and 7705)

**§ 222.35 How does a local educational agency count the membership of its federally connected children?**

An applicant counts the membership of its federally connected children by

using one or both of the following methods:

(a) *Parent-pupil survey.* An applicant may conduct a parent-pupil survey to count the membership of its federally connected children, which must be counted as of the survey date.

(1) The applicant shall conduct a parent-pupil survey by providing a form to a parent of each pupil enrolled in the LEA to substantiate the pupil's place of residence and the parent's place of employment. A parent-pupil survey form must include the following:

(i) Pupil enrollment information (this information may also be obtained from school records), including—

- (A) Name of pupil;
- (B) Date of birth of the pupil; and
- (C) Name of public school and grade of the pupil.

(ii) Pupil residence and parent employment information, including—

- (A) Address of the pupil's residence (or other location information for that residence, such as legal description), including the name of the Federal facility if the pupil's residence is on Federal property; and
- (B) Name (as it appears on the employer's payroll record) of the parent (mother, father, legal guardian or other person standing in *loco parentis*) who is employed on Federal property and with whom the pupil resides (unless the parent is a member of the uniformed services on active duty);

(C) Name and address of the Federal property on which the parent is employed (or other location information, such as legal description), unless the parent is a member of the uniformed services on active duty;

(D) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of that parent;

(E) If the parent is a civilian employed on a Federal vessel, the name of the vessel, hull number, and name of the controlling agency;

(F) The signature of the parent supplying the information and the date of such signature; and

(G) The name of the parent's employer and the employer's address (or other location information, such as legal description), unless a parent is a

member of the uniformed services on active duty.

(2) An LEA may accept a parent-pupil survey form, or a parent-pupil survey form that is signed by a person other than a parent, only under unusual circumstances. In those instances, the parent-pupil survey form must show why the parent did not sign the survey form, and when, how, and from whom the residence and employment information was obtained.

(b) *Source check.* (1) An applicant may count the membership of its federally connected children by using a source check to substantiate a pupil's place of residence or parent's place of employment on the survey date.

(2) A source check is a form provided—

(i) To a parent's employer, on which the employer certifies as to the place of employment of a parent of a pupil claimed;

(ii) To a housing official, on which the official certifies as to the residence of each pupil claimed; or

(iii) To a tribal official, on which the official certifies as to the residence of each pupil claimed residing on Indian lands over which that tribal official has jurisdiction.

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(Authority: 20 U.S.C. 7703 and 7706)

**§222.36 What minimum number of federally connected children must a local educational agency have to receive a payment on behalf of those children under section 8003(b) and (e)?**

(a) Except as provided in paragraph (d) of this section, an LEA is eligible to receive a payment under section 8003(b) (basic support and learning opportunity threshold) and (e) (hold harmless) for a fiscal year only if the total number of its eligible federally connected children for whom it provided a free public education for the preceding fiscal year was—

(1) At least 400 who were in average daily attendance (ADA); or

(2) At least 3 percent of the total number of children in ADA.

(b) Except as provided in paragraph (d) of this section, an applicant LEA is eligible to receive a payment under

section 8003 for a fiscal year on behalf of federally connected children described in section 8003(a)(1)(F) or (G) only if the total number of those children for whom it provided a free public education for the preceding fiscal year was at least—

(1) 1,000 in ADA; or

(2) 10 percent of the total number of children in ADA.

(c) Children described in paragraph (b) of this section are counted for the purposes of paragraph (a) of this section only if the applicant LEA is eligible to receive a payment on behalf of those children under section 8003.

(d) This section does not apply to hold harmless payments under section 8003(e) for fiscal year 1995.

(Authority: 20 U.S.C. 7703(a)(3) and (b)(1)(B))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35415, July 1, 1997]

**§222.37 How does the Secretary calculate the average daily attendance of federally connected children?**

(a) This section describes how the Secretary computes the ADA of federally connected children for each category in section 8003 to determine an applicant's payment.

(b) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected children for the current fiscal year payment as follows:

(1) Except as provided in paragraph (b)(3) of this section—

(i) By dividing the ADA of all the LEA's children for the second preceding fiscal year by the LEA's total membership on its survey date for the second preceding fiscal year (or, in the case of an LEA that conducted two membership counts in the second preceding fiscal year, by the average of the LEA's total membership on the two survey dates); and

(ii) By multiplying the figure determined in paragraph (b)(1)(i) of this section by the LEA's total membership of federally connected children in each subcategory described in section 8003 and claimed in the LEA's application for the current fiscal year payment (or, in the case of an LEA that conducts two membership counts, by the average