

Notice of Proposed Rulemaking: Impact Aid Part 222, title 34, Code of Federal Regulations

Below is a summary of proposed changes to the Impact Aid regulations that were released for public comment on December 30, 2015. Many of these regulations have not been updated since 1995. Note, this NPRM predates the Every Student Succeeds Act and, as such, the Impact Aid references are to Impact Aid as Title VIII. Please contact NAFIS with any questions.

Docket ID: [ED-2015-OESE-0109]

Comments due: February 16, 2016

Questions posed for public comment:

- Are there alternative methods for counting federal-connected children besides the parent-pupil survey form or source check collection tools, either in use or that you propose?
- What types of technical assistance would you like the Department to provide to properly educate and inform LEAs on the two regulatory methods of data collection, or on other methods?
- Can you propose ways in which online or electronic data collection might be used to facilitate the data collection process? This may include but is not limited to the electronic collection of parent-pupil survey forms and the use of student information systems for Impact Aid data collection.

Summary of Proposed Changes

- 222.2 - Membership: amends definition of “membership” to clarify that an eligible student in membership must live in the same State as the LEA. Makes exceptions for Section 8010 (c) of statute and situations in which children are covered under a formal written tuition or enrollment agreement between two states.
- 222.2 - Parent Employed on Federal Property: clarifies definition to *include* parents employed by the Federal Government but who report to an alternate duty station, such as telework, and *exclude* parents whose job includes providing services on Federal property, but who are not Federal employees and whose duty station is not on Federal property. Deletes provision related to parents working on “commingled Federal property;” LEAs have not used it.
- 222.3 & 222.5 – How Does an LEA Apply for Assistance Under 8002 & 8003? AND When May an LEA Amend its Application?: changes the date by which an LEA may amend its application, including an LEA requesting special circumstances, from September 30 to June 30.
- 222.22 – How Does the Secretary Treat Compensation from Federal Activities for Purposes of Determining Eligibility and Payments?: clarifies that payments in lieu of taxes (PILTs) and revenues from other Federal sources (not funds from ED or DoD, consistent with statute and current practice) are counted as “compensation from Federal activities” for determining a Section 8002 LEA’s eligibility and maximum payment.
- 222.23 – How are Consolidated LEAs Treated for the Purposes of Eligibility and Payment?: replaces obsolete “highest and best” provision with one that describes how consolidated LEAs receive Section 8002 payments, such as the requirement that, in order to maintain eligibility, the consolidated district contain, within the boundary of one of its former districts, Federal property that comprises at least ten-percent of the taxable value of the former LEA at the time of Federal acquisition. Provides that consolidated LEAs receive foundation payments, but no “remaining funds,” since data is unavailable for ED to calculate the consolidated district’s maximum payment. Both provisions reflect ED’s current practice.

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- 222.24: How Does an LEA that has Multiple Tax Rates for Real Property Classifications Derive a Single Real Property Tax?: proposal would set a standard mathematical procedure (LEA divides the total revenue it receives from property taxes by the assessed valuation of the property within the LEA) to determine a single tax rate under Section 8002 for LEAs with multiple tax rates for different property classifications. Reflects current ED practice.
- 222.30 - What is "Free Public Education?": excludes Federal charter school startup funds from the analysis of whether Federal funds provide a substantial portion of the educational program. Clarifies the Secretary analyzes whether a substantial portion of the educational program is funded by Federal sources by comparing the LEA's finances to other LEAs in the State.
- 222.32 - What Information does the Secretary Use to Determine an LEA's Basic Support Payment?: Clarifies that LEAs must include an accurate membership count in its application by the January 31 deadline, not through the amendment process.
- 222.33 - When Must an Applicant Make Its Membership Count? AND 222.34 If an Applicant Makes a Second Membership Count, When Must That Count be Made?: LEA must submit a "timely and complete" application, including an accurate membership count by the application deadline. Deletes option for a second membership count (last used in 2012 by two LEAs).
- 222.35 - How Does an LEA Count the Membership of its FCCs?: reorders information required on parent-pupil survey form for clarity; specifies unusual circumstances in which someone other than a parent or legal guardian may sign a parent-pupil survey form; clarifies an LEA employee may not sign the form. New proposal requires the use of source check forms to document Indian lands and low-rent housing children; parent-pupil survey would not be accepted.
- 222.37 – How does the Secretary Calculate Average Daily Attendance?: clarifies options for reporting ADA and makes them available to all states, including State average attendance ratio (aka "negotiated ratio") which 35 states use. Secretary may calculate negotiated ratio in cases where there is reliable public data.
- 222.40 – What Procedures does an SEA Use For Certain LEAs to Determine GCDs Using Additional Factors, for LCR purposes?: requires that SEAs submit a rationale for the additional factors and describe how the selected factor(s) affect the cost of education.
- 222.62 – How are LEAs Determined Eligible Under Section 8003(b)(2)?: requires an LEA wishing to be considered for a (b)(2) payment to submit with its initial application the information needed to establish eligibility.
- 222.91 - What Requirements Must an LEA Meet to Receive a Payment Under Section 8003 for Indian Lands Children?: LEAs must include with the application an assurance that the LEA has responded in writing to input received during the IPP consultation process. In addition, IPP waivers must be submitted *with* the application and include a written statement from a tribal official that the tribe has received a copy of the IPP, understands the requirements that are being waived, and is satisfied with the LEA's educational services.
- 222.94 - What Are the Responsibilities of the LEA with Regard to IPPs?: adds a requirement that LEAs provide an opportunity for tribes to recommend a method of communication and modify that method to ensure maximum participation; adds a requirement that LEAs share with tribes and parents of Indian children relevant information related to Indian children's participation in the LEA's education programs and activities; adds a requirement that LEAs claiming Indian lands children respond in writing, at least annually, to input obtained from parents of Indian children and tribal officials during the IPP consultation process, disseminate these responses prior to

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submission of the IPPs to ED, and provide a copy of the IPPs to the tribe annually. *Does not require that an LEA adopt any specific recommendations.* Changes from 60 to 90 days the time period in which an LEA must amend its IPPs based on its own determination after obtaining input from tribes and parents of Indian children. Additional time would allow revisions and any necessary procedural steps (i.e. board approval).

- 222.95 - How Are IPPs Reviewed to Ensure Compliance?: allows ED to withhold *all or part*, rather than all, of the Impact Aid payment from an LEA that is not in compliance; changes from 60 to 90 days the time within which LEAs must revise IPPs in response to notification from ED.
- 222.161 - How is State Aid Determined Under Section 8009?: SEAs may request permission from the Secretary to make *estimated or preliminary* equalized payments if ED does not make a determination 30 days before the start of an SEA's fiscal year. Request must include an assurance to repay LEAs the amount reduced to them within 60 days of ED's determination that the SEA fails to meet the equalization requirements. SEAs not currently equalized must submit projected data showing whether it meets the disparity standard. Addresses definition of "current expenditures:" refers back to definition in statute rather than in regulations, then lists additional exclusion of expenditures for purposes of State equalization. Clearly identifies "special cost differentials."
- 222.162 - What Disparity Standard Must a State Meet in Order to be Certified and How Are Disparities in Current Expenditures or Revenues Per Pupil Measured?: Explicitly defines the four options for taking special cost differentials into account. Clarifies ED's long-standing interpretation of statute.
- 222.164 - What Procedures does the Secretary Follow in Making an 8009 Determination?: Proposes that the Secretary, rather than the State or LEA initiating a proceeding, notify the state and all LEAs of their right to present their views within 30 days, prior to the Secretary's determination under Section 8009.