

## § 222.20

(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)

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

### Subpart B—Payments for Federal Property Under Section 8002 of the Act

#### § 222.20 What definitions apply to this subpart?

In addition to the terms referenced or defined in § 222.2, the following definitions apply to this subpart:

*Acquisition or acquired by the United States.* (1) The term means—

(i) The receipt or taking by the United States of ownership in fee simple of real property by condemnation, exchange, gift, purchase, transfer, or other arrangement;

(ii) The receipt by the United States of real property as trustee for the benefit of individual Indians or Indian tribes; or

(iii) The imposition by the United States of restrictions on sale, transfer, or exchange of real property held by individual Indians or Indian tribes.

(2) The definition of “acquisition” in 34 CFR 77.1(c) (Definitions that Apply to Department Regulations) of this title does not apply to this subpart.

(Authority: 20 U.S.C. 7702)

*Assessed value.* For the purpose of determining eligibility under section 8002(a)(1) and § 222.21, the following definition applies:

(1) The term means the value that is assigned to real property, for the purpose of generating local real property tax revenues for current expenditures (as defined in section 8013 of the Act), by a State or local official who is legally authorized to determine that assessed value.

(2) The term does not include—

(i) A value assigned to tax-exempt real property;

(ii) A value assigned to real property for the purpose of generating other types of revenues, such as payments in lieu of taxes (PILOTs);

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(iii) Fair market value, or a percentage of fair market value, of real property unless that value was actually used to generate local real property tax revenues for current expenditures (as defined in section 8013); or

(iv) A value assigned to real property in a condemnation or other court proceeding, or a percentage of that value, unless that value was actually used to generate local real property tax revenues for current expenditures (as defined in section 8013).

(Authority: 20 U.S.C. 7702(a)(1))

*Eligible Federal property.* (1) The term means “Federal property” as defined in § 222.2(c) for section 8002, which meets the following additional requirements:

(i) The United States has acquired the Federal property since 1938; and

(ii) The Federal property was not acquired by exchange for other Federal property that the United States owned within the school district before 1939.

(2) In addition, for local educational agencies (LEAs) that are eligible under § 222.21(a)(2), the term also means land acquired by the United States Forest Service between 1915 and 1990.

(Authority: 20 U.S.C. 7702)

#### § 222.21 What requirements must a local educational agency meet concerning Federal acquisition of real property within the local educational agency?

(a) For an LEA with an otherwise approvable application to be eligible to receive financial assistance under section 8002 of the Act, the LEA must meet the requirements in subpart A of this part and § 222.22. In addition, unless otherwise provided by statute as meeting the requirements in section 8002(a)(1)(C), the LEA must document—

(1) That the United States owns or has acquired “eligible Federal property” within the LEA, that has an aggregate assessed value of 10 percent or more of the assessed value of—

(i) All real property in that LEA, based upon the assessed values of the eligible Federal property and of all real property (including that Federal property) on the date or dates of acquisition of the eligible Federal property; or

(ii) All real property in the LEA as assessed in the first year preceding or

succeeding acquisition, whichever is greater, only if—

(A) The assessment of all real property in the LEA is not made at the same time or times that the Federal property was so acquired and assessed; and

(B) State law requires an assessment be made of property so acquired; or

(2)(i) That, as demonstrated by written evidence from the United States Forest Service satisfactory to the Secretary, the LEA contains between 20,000 and 60,000 acres of land that has been acquired by the United States Forest Service between 1915 and 1990; and

(ii) That the LEA serves a county chartered by State law in 1875 or 1890.

(b) “Federal property” described in section 8002(d) (certain transferred property) is considered to be owned by the United States for the purpose of paragraph (a) of this section.

(c) If, during any fiscal year, the United States sells, transfers, is otherwise divested of ownership of, or relinquishes an interest in or restriction on, eligible Federal property, the Secretary redetermines the LEA’s eligibility for the following fiscal year, based upon the remaining eligible Federal property, in accordance with paragraph (a) of this section. This paragraph does not apply to a transfer of real property by the United States described in section 8002(d).

(d) Except as provided under paragraph (a)(2) of this section, the Secretary’s determinations and redeterminations of eligibility under this section are based on the following documents:

(1) For a new section 8002 applicant or newly acquired eligible Federal property, only upon—

(i) Original records as of the time(s) of Federal acquisition of real property, prepared by a legally authorized official, documenting the assessed value of that real property;

(ii) Facsimiles, such as microfilm, or other reproductions of those records; or

(iii) If the documents specified in paragraphs (d)(1)(i) and (ii) are unavailable, other records that the Secretary determines to be appropriate and reliable for establishing eligibility under section 8002(a)(1) of the Act, such as

Federal agency records or local historical records.

(2) For a redetermination of an LEA’s eligibility under section 8002(a)(1), only upon—

(i) Records described in paragraph (d)(1) of this section; or

(ii) Department records.

(e) The Secretary does not base the determination or redetermination of an LEA’s eligibility under this section upon secondary documentation that is in the nature of an opinion, such as estimates, certifications, or appraisals.

(Authority: 20 U.S.C. 7702(a)(1))

[60 FR 50778, Sept. 29, 1995, as amended at 73 FR 70575, Nov. 20, 2008]

**§ 222.22 How does the Secretary treat compensation from Federal activities for purposes of determining eligibility and payments?**

(a) An LEA with an otherwise approvable application is eligible to receive assistance under section 8002 for a fiscal year only if the LEA meets the requirements in subpart A of these regulations and § 222.21, and is not substantially compensated, for the loss in revenue resulting from Federal ownership of real property by increases in revenue accruing to the LEA during the previous fiscal year from Federal activities with respect to the eligible Federal property in the LEA.

(b) The Secretary considers that an LEA is substantially compensated by increases in revenue from Federal activities with respect to the eligible Federal property if—

(1) The LEA received new or increased revenue during the preceding fiscal year that is generated directly from the eligible Federal property or activities in or on that property; and

(2) The revenue described in paragraph (b)(1) of this section equals or exceeds the maximum payment amount under section 8002(b) for the fiscal year for which the LEA seeks assistance.

(c) If an LEA described in paragraph (a) of this section received revenue described in paragraph (b)(1) of this section during the preceding fiscal year that is less than the maximum payment amount calculated under section 8002(b)(2) for the fiscal year for which the LEA seeks assistance, the Secretary reduces that maximum payment