

§ 222.37

34 CFR Ch. II (7-1-11 Edition)

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

of the LEA's total membership of federally connected children in each subcategory on the two survey dates).

(2)(i) For purposes of this section, actual ADA means raw ADA data that have not been weighted or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(ii) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(iii) An LEA's ADA count includes attendance data for children for whom it makes tuition arrangements with other educational entities.

(3) Attendance data are not counted for any child—

(i) Who is not physically present at school for the daily minimum time period required by the State, unless the child is—

(A) Participating via telecommunication or correspondence course programs that meet State standards; or

(B) Being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Attending the applicant's schools under a tuition arrangement with another LEA.

(c) If an LEA is in a State that does not collect ADA data for purposes of distributing State aid for education, the LEA or SEA shall submit data necessary for the Secretary to calculate the ADA of the LEA's federally connected children as follows:

(1) If an LEA is in a State that formerly collected ADA data for purposes of distributing State aid for education, the SEA may submit the total ADA and total membership data for the State for each of the last three fiscal years that ADA data were collected. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Dividing the total ADA data by the total membership data for each of the three fiscal years and averaging the results; and

(ii) Multiplying the average determined in paragraph (c)(1)(i) of this section by the LEA's total membership of

federally connected children as described in paragraph (b)(1)(ii) of this section.

(2) An LEA may submit attendance data based on sampling conducted during the previous fiscal year. The sampling must include attendance data for all children for at least 30 school days. The data must be collected during at least three periods evenly distributed throughout the school year. Each collection period must consist of at least five consecutive school days. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

- (i) Determining the ADA of all children in the sample;
- (ii) Dividing the figure obtained in paragraph (c)(2)(i) of this section by the LEA's total membership for the previous fiscal year; and
- (iii) Multiplying the figure determined in paragraph (c)(2)(ii) of this section by the LEA's total membership of federally connected children for the current fiscal year, as described in paragraph (b)(1)(ii) of this section.

(3) If an LEA is in a State that distributes State aid for education based on data similar to attendance data, the SEA may request that the Secretary use those data to calculate the ADA of the LEA's federally connected children. If the Secretary determines that those data are, in effect, equivalent to attendance data, the Secretary allows use of the requested data and determines the method by which the ADA of the LEA's federally connected children will be calculated.

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

(Authority: 20 U.S.C. 7703, 7706, 7713)

§ 222.38 What is the maximum basic support payment that a local educational agency may receive under section 8003(b)?

The maximum basic support payment that an LEA may receive under section 8003(b) for any fiscal year is the sum of its total weighted student units under section 8003(a)(2) for the federally connected children eligible to be counted as the basis for payment, multiplied by the greater of one of the following:

- (a) One-half of the State average per pupil expenditure for the third fiscal

year preceding the fiscal year for which the LEA seeks assistance.

(b) One-half of the national average per pupil expenditure for the third fiscal year preceding the fiscal year for which the LEA seeks assistance.

(c) The comparable local contribution rate (LCR) determined in accordance with §§ 222.39–222.41.

(d) The State average per pupil expenditure multiplied by the local contribution percentage as defined in section 8013(8) of the Act.

(Authority: 20 U.S.C. 7703 (a), (b) and (c))

§ 222.39 How does a State educational agency identify generally comparable local educational agencies for local contribution rate purposes?

(a) To identify generally comparable LEAs within its State for LCR purposes, the State educational agency (SEA) for that State shall use data from the third fiscal year preceding the fiscal year for which the LCR is being computed to group all of its LEAs, including all applicant LEAs, as follows:

(1) *Grouping by grade span/legal classification alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State. As an alternative grade-span division, after consultation with the applicant LEAs in the State, divide all LEAs into elementary, secondary, or unified grade-span groups, as appropriate, within the State.

(2) *Grouping by grade span/legal classification and size.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1)) of this section and legal classification, if relevant and sufficiently different from grade span and size.

(ii) List all LEAs within each group in descending order by size as measured by ADA, placing the LEA with the *largest* ADA at the top of the list. A State that does not tabulate actual annual ADA shall use the same formula for establishing ADA for the purpose of ranking LEAs by size as the Department has approved for the purpose of