§ 222.119 What is the effect of withholding under this subpart?

(a) The withholding provisions in this subpart apply to all payments that an LEA is otherwise eligible to receive under section 8003 of the Act for any fiscal year.

(b) The Assistant Secretary withholds funds after completion of any administrative proceedings under §§ 222.116–222.118 until the LEA documents either compliance or exemption from compliance with the requirements in section 8004 of the Act and this subpart.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), (e)(8)–(9))

§ 222.120 When is a local educational agency exempt from withholding of payments?

Except as provided in paragraph (d)(2) of this section, the Assistant Secretary does not withhold payments to an LEA under the following circumstances:

(a) The LEA documents that it has received a written statement from the affected Indian tribe or tribes that the LEA need not comply with section 8004 (a) and (b) of the Act, because the affected Indian tribe or tribes is satisfied with the provision of educational services by the LEA to the children claimed on the LEA’s application for assistance under section 8003 of the Act.

(b) The Assistant Secretary receives from the affected Indian tribe or tribes a written request that meets the requirements of § 222.121 not to withhold payments from an LEA.

(c) The Assistant Secretary, on the basis of documentation provided by the LEA, determines that withholding payments during the course of the school year would substantially disrupt the educational programs of the LEA.

(d)(1) The affected Indian tribe or tribes elects to have educational services provided by the Bureau of Indian Affairs under section 1101(d) of the Education Amendments of 1978.

(d)(2) For an LEA described in paragraph (d)(1) of this section, the Secretary recalculates the section 8003 payment that the LEA is otherwise eligible to receive to reflect the number of students who remain in attendance at the LEA.

(Authority: 20 U.S.C. 7703(a), 7704(c), (d)(2) and (e)(8))

§ 222.121 How does the affected Indian tribe or tribes request that payments to a local educational agency not be withheld?

(a) The affected Indian tribe or tribes may submit to the Assistant Secretary a formal request not to withhold payments from an LEA.
(b) The formal request must be in writing and signed by the tribal chair-
man or authorized designee.

(Authority: 20 U.S.C. 7704 (d)(2) and (e)(8))

§ 222.122 What procedures are fol-
lowed if it is determined that the local educational agency’s funds
will not be withheld under this sub-
part?

If the Secretary determines that an LEA’s payments will not be withheld under this subpart, the Assistant Sec-
retary notifies the LEA and the af-
fected Indian tribe or tribes, in writing, by certified mail with return receipt requested, of the reasons why the pay-
ments will not be withheld.

(Authority: 20 U.S.C. 7704 (d)–(e))

§§ 222.123–222.129 [Reserved]

Subpart H [Reserved]

Subpart I—Facilities Assistance
and Transfers Under Section
8008 of the Act

§ 222.140 What definitions apply to this
subpart?

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

Minimum school facilities means those school facilities for which the Sec-
retary may provide assistance under this part as follows:

(1) The Secretary, after consultation
with the State educational agency and the local educational agency (LEA),
considers these facilities necessary to support an educational program—

(i) For the membership of students resi-
ding on Federal property to be served at normal capacity; and

(ii) In accordance with applicable Federal and State laws and, if neces-
sary or appropriate, common prac-
tice in the State.

(2) The term includes, but is not re-
stricted to—

(i) Classrooms and related facilities; and

(ii) Machinery, utilities, and initial equipment, to the extent that these are
necessary or appropriate for school purposes.

Providing assistance means con-
structing, leasing, renovating, remodeling, rehabilitating, or otherwise pro-
viding minimum school facilities.

(Authority: 20 U.S.C. 7708)

§ 222.141 For what types of projects
may the Secretary provide assist-
ance under section 8008 of the Act?

The types of projects for which the Secretary may provide assistance un-
der section 8008 of the Act during any given year include, but are not re-
stricted to, one or more of the fol-
lowing:

(a)(1) Emergency repairs to existing
facilities for which the Secretary is re-
sponsible under section 8008.

(2) As used in this section, the term
emergency repairs means those repairs
necessary—

(i) For the health and safety of per-
sons using the facilities;

(ii) For the removal of architectural
barriers to the disabled; or

(iii) For the prevention of further de-
terioration of the facilities.

(b) Renovation of facilities for which
the Secretary is responsible under sec-
tion 8008 to meet the standards of min-
imum school facilities in exchange for
an LEA or another appropriate entity
accepting transfer of the Secretary’s
interest in them under §222.143.

(c) Provision of temporary facilities
on Federal property pending emer-
gency repairs.

(d) Construction of replacement min-
imum school facilities when more cost-
effective than renovation and when the
replacement facilities are to be trans-
ferred to local ownership under §222.143.

(Authority: 20 U.S.C. 7708)

§ 222.142 What terms and conditions
apply to minimum school facilities
operated under section 8008 by an-
other agency?

When minimum school facilities are
provided under section 8008, the Sec-
retary may—

(a) Arrange for the operation of the
facilities by an agency other than the Department;

(b) Establish terms and conditions
for the operation of the facilities; and

(c) Require the operating agency to
submit assurances and enter into other