

Special Edition: MEP Policy Q&As from the June 2017 Revisions to National Certificate of Eligibility (COE) Webinar and Quarter 3 ID&R and Child Eligibility Policy Q&As

MEP Policy Q&As from the June 1, 2017 Revisions to National Certificate of Eligibility (COE) Webinar

Please explain how the Qualifying Arrival Date (QAD) is calculated when the child's move precedes the workers.

The QAD is the date on which the child's 36 months of eligibility for the Migrant Education Program (MEP) begins. The Office of Migrant Education (OME) considers the QAD to be the day that the child and worker complete qualifying moves to be together. If the child joins the worker, the QAD is the date the child arrived. If a child's move precedes the worker's move, the QAD is the date the worker arrived (see MEP Non-Regulatory Guidance (NRG), Chapter II, Question E3).

How far back can we go in history to qualify a Migratory Agricultural Worker?

Thirty-six months. Under section 1309(2) of the ESEA, a "migratory agricultural worker" is a person who, in the preceding 36 months, made a qualifying move and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in agriculture (which may be dairy work or the initial processing of raw agricultural products). See MEP NRG, Chapter II, Question C1.

How do we document "economic necessity" on the COE?

The U.S. Department of Education (Department) considers "economic necessity" to mean that the child and the worker (if the child is not the worker) move because they could not afford to stay in the current location. The MEP is premised on the Federal government's understanding that migratory children have unique needs in view of their mobility, and generally are in low-income families.

Thus, a person who leaves from the place where he or she lives to, for example, (1) visit family or friends, (2) attend a wedding or other event, (3) take a vacation, (4) have an educational or recreational experience, or (5) take care of a legal matter, would not have "changed residence due to economic necessity" because the person did not go to the new place because of financial need. Similarly, this person would not have "changed residence due to an economic necessity" upon returning home from one of these visits.

The Department recommends that recruiters provide a comment on the COE if there appears to be any reason that an independent reviewer would question whether the child or worker moved due to economic necessity. For more information on the term economic necessity, please see MEP NRG, Chapter II, Question D3.

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Can you explain 6c in Section III Qualifying Work and Moves?

This box (6c – State documentation for an employer) is used to verify that the State has current documentation to support that the work described in #5a is temporary employment for this particular employer. Consistent with the COE instructions, 6c is used to document the name of the employer, whether it is the name of or code for a farmer, a grower, a business, or a corporation, where the worker engaged in qualifying work (see COE Instructions, page 11.)

In general, the Department believes that a determination about the temporary nature of a worker's employment is best obtained through a recruiter's interview with the worker or employer. However, 34 C.F.R. § 200.81(p) authorizes a State Education Agency (SEA) to make its own determination that employment is temporary so long as the SEA has some other reasonable basis for determining that the employment will not last more than 12 months. For employment that is constant and available year-round, 34 C.F.R. § 200.81(p) permits an SEA to conclude that the employment is "temporary" for purposes of the MEP only if it determines and documents that, given the nature of the work, of those agricultural and fishing workers whose children the SEA determined to be eligible using some other reasonable basis, virtually none remained employed by the same employer more than 12 months (see MEP NRG, Chapter II, Question G10.)

If an out of school youth (OSY) or emancipated youth travels alone, is that individual's name only entered in the Child Data section of the COE? Would the parent section then be left blank?

If there is no parent/guardian information disclosed, or if the child is responsible for his or her own welfare (e.g., emancipated youth), write a dash (-) or "N/A" in the Parent/Guardian fields in the Family Data section of the COE. The individual's name is entered in the Child Data section. See COE Instructions, pages 3-4.

Can we include the Residency Date between numbers 3 and 4 of Qualifying Moves and Work section III?

No. Per COE instructions pages 1-2, the order, numbering, and wording of items within the Qualifying Moves and Work section must remain the same. The Qualifying Moves and Work section is a Required Data Section, which States can place according to State preference and need, but that must be maintained in whole and unaltered.

Scenario: Mother, father and child move from California to Georgia on June 1, 2017; the move to Georgia was for any type of work. The father starts working in a restaurant on June 15, 2017. The father is not making enough money at the restaurant, so he moves to Florida in September 2017 to pick oranges. He returns to Georgia to reunite with his wife

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and child in January 2018, and he finds works cutting cabbage on January 30, 2017. Does the child qualify?

No. The child does not meet the ESSA definition of a migratory child, a child or youth who made a qualifying move in the preceding 36 months as a migratory agricultural worker or a migratory fisher; or with, or to join a parent/guardian or spouse who is a migratory agricultural worker or migratory fisher. When the child made a qualifying move from California to Georgia on June 1, 2017 with his parents, he did not move with a migratory agricultural worker or fisher, since neither his mother nor his father had established themselves as migratory agricultural workers before or soon after that qualifying move.

Does the child have to move with the worker in order for it to be a qualifying move?

No. According to the ESSA definition, a qualifying move is a move due to economic necessity from one residence to another residence and from one school district to another school district. Any individual meeting that definition has made a qualifying move.

What evidence is needed to document that the worker actually engaged in the work? What evidence is needed to document that the worker actually engaged in agriculture/fishing related employment from a previous move?

Recruiters may rely on the worker's statement for evidence that the worker actually engaged in new qualifying work soon after his qualifying move. An individual's engagement in new qualifying work must occur no longer than 60 days after the move. See MEP NRG, Chapter II, Question C5.

In cases where a State interprets the wording "soon after" to mean more or less than 60 days, the State should establish a written standard that all recruiters are to apply, and which the State can rely upon in the event of an audit or investigation questioning the reasonableness of the State's policy. In this case, if the worker is determined to be a migratory agricultural worker or migratory fisher based on his or her engagement in new qualifying work **more** than 60 days after the qualifying move, this must be explained in the comments section of the COE.

Similarly, recruiters may rely on the worker's statement for evidence of the recent history of moves for qualifying work. The recruiter should ask whether the worker has ever moved before and request information on the dates of the moves, and whether the worker, or his or her parent/guardian or spouse, engaged in qualifying work after those moves. Consistent with the COE instructions, the recruiter must note this information in the Comments section of the COE.

For example, the recruiter could write, "worker moved from Brownsville, Texas, to Decatur, Michigan, and planted tomatoes in May 2016, and moved from Decatur, Michigan to Presque Isle, ME, and picked potatoes in October 2016." See MEP NRG, Chapter II, Question C15 and COE instructions pages 9-11.

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How has the qualifying move definition changed from NCLB to ESSA?

The ESSA added a definition of “qualifying move” that basically combines the definition of a “move” that is in the MEP’s program regulations with the parameters for school districts from the NCLB’s definition of “migratory child”. It is important to note that NO mention of qualifying work is contained in the ESSA definition of qualifying move. Under ESSA, a qualifying move is a move due to economic necessity from one residence to another residence and from one school district to another school district.

If a child works in the United States and went back to Mexico because of his work visa, when he comes back to the U.S., can he still qualify for the program?

As stated in the MEP NRG, Chapter II, Question D15, although an individual’s move to another country may not be considered a qualifying move, if it is a “change of residence”, the individual’s move back to a school district in the U.S. might be a qualifying move. Once he comes to the United States, he can qualify for the program, if he meets the criteria for being a migratory child.

When determining if an individual is a migratory worker using the recent history of moves, can one of the moves be in a foreign country, such as Mexico?

Since it is not possible to have a qualifying move to another country, OME does not consider moves in another country as counting toward establishing a worker’s recent history. See MEP NRG, Chapter II, Question D15.

What is the timeline for updating MSIX to reflect COE data field changes?

One revision to the recently released revised national COE instructions and template was the replacement of terms “Female Parent” and “Male Parent” with “Parent 1” and “Parent 2”. Although the user interface on the MSIX site has not yet been updated to reflect this new COE terminology, MSIX functionality already allows MSIX users to search both parent name fields. For example, if you search for a mother’s name, MSIX will return results where the same name appears in either the male parent or female parent fields.

On MSIX, the labels “Female Parent” and “Male Parent” are interchangeable for both “Parent 1” and “Parent 2”. You may see a female name in the male parent name field or vice versa. A user interface update for “Parent 1” and “Parent 2” has been scheduled for next year. Although MSIX still collects the minimum data elements (MDEs) Birth City, Birth State and Birth Country in States’ file submissions, these MDEs effectively have become optional. Student records will successfully upload into MSIX with or without these MDEs. Although the MSIX Data Completeness report will flag these data elements as incomplete, there is no cause for concern.

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On the COE, where should information be recorded about children who did not move or were born after the qualifying move?

States can use the Comments section to record non-eligibility related information and to record the names of children in the household who are not eligible for the MEP. Only eligible children should be listed in the Child Data section of the COE.

What is an example of a non-qualifying move referred to on page 8 of the COE Instructions which state, “The QAD is the date that the child’s eligibility for the MEP begins. The QAD is not affected by subsequent non-qualifying moves”?

A qualifying move is (1) a move made due to economic necessity; and (2) from one residence to another residence; and (3) from one school district to another school district. A move that does not have ALL three factors in place would not be considered a qualifying move. Two examples of non-qualifying moves would be a move from one house to another within the same school district and a visit to another State for a family reunion. Please see MEP NRG Question D3 and D4 for clarification and additional examples of moves that would be considered non-qualifying moves.

In a scenario where a child moves with a migratory agriculture worker or migratory fisher in a school district of more than 15,000 square miles, would the move have to be to a “temporary residence” if they were to move within the same 15K district?

Yes. Under ESSA 1309 (5)(ii), in the case of a school district of more than 15,000 square miles, a qualifying move means a move due to economic necessity wherein a qualifying move is a distance of 20 miles or more to a temporary residence.

Would scaling, debarking, and decking logs count as initial processing? Once the logs are partially cut—turned into cants—is this the end of the initial processing?

Chapter II, Question F20 of the MEP NRG defines “initial processing as work that (1) is beyond the production stage of agricultural work and (2) precedes the transformation of the raw product into something more refined. If the activities described, scaling, debarking, decking and turning the logs into cants, are activities that occur beyond the production stage of agricultural work and precedes the transformation of the raw product, in this case logs, into something more refined, then these activities can be considered “initial processing” of logs. However, the Department considers a product no longer to be in the stage of “initial processing” once the transformation of the raw product into something more refined begins. The Department believes that work up to,

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but not including, the start of the transformation process is agricultural or fishing work for purposes of the MEP (see Chapter II, Question F24 of the MEP NRG).

With regards to the recent history, does this refer to moves made within the thirty-six months prior to the interview or the thirty-six months prior to the Qualifying Arrival Date?

Chapter II, Question C16 of the MEP NRG explains that the period of one's "recent history" of moves for qualifying work should not exceed 36 months prior to the date of the recruiter's interview.

A family made two qualifying moves this year before July 1, 2017 but they were never identified or recruited. They made a third move on July 5, 2017 but are not yet engaged in qualifying work. Are the eligible for the MEP?

If the worker is identified soon after the qualifying move, and indicates that he expects to engage in new qualifying work soon (within a 60 day window under ESSA, as explained in Chapter II, Question C5 of the MEP NRG), but has not yet done so, a recruiter may immediately consider the individual to be a migratory agricultural worker based on the July 5, 2017 move if two conditions are met:

1. The worker must have already begun to actively seek new qualifying work, and
2. The worker must have a recent history of moves for qualifying work. (See Chapter II, Question C9 of the MEP NRG.)

The recruiter may rely on the worker's statements regarding his attempts to obtain new qualifying work and his history of moves for qualifying work. Consistent with the COE instructions, the recruiter must note this information in the Comments section of the COE. The information, which would include the worker's statement together with any additional information the recruiter chooses to add, should provide sufficient information to allow COE reviewers and third parties to assess the reasonableness of the recruiter's eligibility determination. See Chapter II, Questions C10 – C11 and 13 – 18 of the MEP NRG.

However, please note that if the worker is not able to supply sufficient information documenting these two conditions, then he has not yet met the definition of a migratory agricultural worker. In order to meet the definition of migratory agricultural worker, the recruiter would need to check back with the worker within the 60 day window to see if he has engaged in new qualifying work (see Chapter II, Question C9 of the MEP NRG).

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Eligibility Scenarios

A family originally lived in Virginia. Then, the mom and two daughters moved to Mexico, while the dad stayed in Virginia. Mom and her daughters then moved from Mexico to Texas to find qualifying work in August 2016 and the mom got a job cutting parsley and cilantro. The dad drove down to Texas and brought the girls back to Virginia in December 2016 and then mom joined them here in March 2017, once the season ended. The family is interviewed in July 2017.

1. Would this family be eligible for the MEP although the mother has sought, but not yet obtained or engaged in qualifying work in Virginia?

2. If they are eligible, which move would justify the qualifying arrival date and which move would justify the residency date?

1. Yes, the family would be eligible assuming the children meet the all the eligibility criteria within the definition of a migratory child.

Under ESSA, a recruiter interviewing a family in July 2017 would make an eligibility determination for the children based on the following eligibility criteria:

- The move of the mother and her children from Mexico to Texas to engage in qualifying work in August 2016, established the mother as a migratory agricultural worker. The mother would retain that status for 36 months until August 2019.
- The children's move back to Virginia in December 2016, was a qualifying move (made due to economic necessity, from one residence to another and across school district lines), and
- The mother's move from Texas to Virginia in December 2016, to join her children and husband was also a qualifying move.

The following are two approaches that the recruiter may employ to determine eligibility:

1. MEP eligibility under ESSA provides that an individual who did not engage in new qualifying work soon after a qualifying move may still be considered a "migratory agricultural worker" if he or she meets both of the following criteria:
 - i. The individual actively sought such new employment; *and*
 - ii. The individual has a recent history of moves for temporary or seasonal agricultural employment.

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In this case, the mother's move from Texas to Virginia to join her family would be considered a qualifying move as defined by the MEP NRG under ESSA if the recruiter is able to document justification in the comment section for both reasons (i) and (ii) listed above. A recruiter completing a COE AFTER July 1, 2017, would use the March 2017, move from Texas to Virginia as the QAD, the date that the child(ren) and the worker completed the move. Since the children's move preceded the worker's move, the QAD is the date that the worker arrived. The mother would then maintain her status as a migratory worker until March 2020.

2. The worker may also make an eligibility determination based on the mother's, as the migratory worker, qualifying move in March 2017, to join her family. As in the preceding instance, the recruiter would use the March 2017 date as the QAD, the date in which the child(ren) and the mother completed the move. Please note the recruiter would not need to provide comments in the comment section since he is not basing his eligibility determination on why the worker has not engaged in new qualifying work soon after a qualifying move. The recruiter is establishing the March 2017 QAD date because the children made a qualifying move in the preceding 36 months to join a parent (in this case, the mother) who is a migratory agricultural worker, the status of which the mother holds until August 2019.

2. The residency date would be the December 2016 date that the children arrived in the school district in Virginia.

A worker, his spouse and two children, ages 5 and 7, move from Cleveland, OH, to Biglerville, PA, to engage in seasonal agricultural work picking apples on August 24, 2017. The father begins work the next day and continues working until October 2017. After the work ends, the entire family moves to Philadelphia, PA, where the mother obtains work in a hotel. The family remains in Philadelphia until April 15, 2019, when they move to York, PA, where the father finds work in a motorcycle factory.

1. **Is this family eligible?**
2. **How many qualifying moves did this family make?**
3. **If the family does not move again, when will MEP eligibility end for the family?**

1. Depending on when the family is identified by the MEP, the children appear to meet the MEP eligibility requirements.
 - a. The children are under age 22 and still entitled to a free public education (through grade 12) in the State.
 - b. The children moved in the preceding 36 months of the interview, with their parent.

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- c. The children’s move with the parent was a “qualifying move” – i.e., due to economic necessity, from one residence to another, and from one school district to another.
 - d. The parent with whom the children move is a migratory agricultural worker because he made a qualifying move in the preceding 36 months of the interview, soon after which he engaged in new qualifying work (season agricultural employment picking apples). The parent became a migratory agricultural worker as a result of the August 24, 2017, move, and retains that status until August 23, 2020.
2. It appears that all three of the following moves meet the definition of “qualifying move” (from one residence to another, due to economic necessity, from one school district to another):
- a. The August 24, 2017, move from Cleveland, OH, to Biglerville, PA, to engage in seasonal agricultural work picking apples.
 - b. The October 2017, move from Biglerville, PA, to Philadelphia, PA, where the mother obtains work in a hotel.
 - c. The April 15, 2019, move from Philadelphia, PA, to York, PA, where the father finds work in a motorcycle factory.
- Please note that we assume they changed residences each time, and due to economic necessity because the moves were for the employment described, but recruiters should include a Comment on the COE if there is any reason a reviewer or third-party might question the economic necessity aspect.
3. It appears that the most recent qualifying arrival date (QAD) is April 15, 2019 (the most recent date the children made a qualifying move with a parent who is a migratory agricultural worker). As long as the State education agency (SEA) approves the COE by August 23, 2020 (the date the parent’s status of a migratory agricultural worker expires), and the COE is based on the qualifying move of April 15, 2019, that the children made with their parent who is a migratory agricultural worker, the children would remain eligible for 36 months from that QAD— until April 14, 2022.

A worker makes a qualifying move on September 15, 2014 from California to Arizona. On August 15, 2017 the family moves together and makes a qualifying move to Colorado. On August 31, 2017 the Colorado recruiter identifies the family and fills out a certificate of eligibility where all eligibility criteria are met. On October 15, 2018 the family makes another move to Arizona due to economic necessity. The family is interviewed in Arizona on October 20, 2018.

- 1. Is the family eligible when interviewed in Colorado on August 31, 2017?**
- 2. Is the family eligible when interviewed in Arizona on October 20, 2018?**

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3. If the family was eligible in Colorado wouldn't they also be eligible in Arizona on the date of the qualifying move?

1. Assuming the children are under age 22 and still entitled to a free public education (through grade 12) in the State, the children are eligible when interviewed in Colorado on August 31, 2017 if the eligibility was based on the September 15, 2014 move. If the interviewer is using the August 15, 2017 move, the children are eligible on August 31, 2017 if after the August 15, 2017 qualifying move, a parent engaged in new qualifying work soon after the move or if he or she did not engage in new qualifying work soon after the move, he or she (1) actively sought new qualifying work and (2) has a recent history of moves for qualifying work. The qualifying work must also be seasonal or temporary employment or personal subsistence and agricultural or fishing. If the interview took place on September 16, 2017 and was based on the September 15, 2014 move, the child is not eligible because at the time of the interview, the parents do not meet the ESSA definition of Migratory Agricultural Workers. See MEP Non-Regulatory Guidance, Chapter II, Question C1.
2. If the family is eligible due to the August 15, 2017 move, they would be eligible in Arizona when interviewed on October 20, 2018.
3. If they are not eligible in Colorado for the reasons discussed in the answer to question 1, they would not be eligible in Arizona when interviewed on October 20, 2018.

Scenario: Paul, age 13, lived with his parents in Portland, ME. Unable to find work in Portland, Paul's father moved on his own to Presque Isle on September 1, 2016, and engaged in seasonal employment harvesting potatoes (within one week of his move). Paul's father returned to Portland on October 20, 2016. Shortly thereafter, Paul's mother was able to find work in a restaurant in Bangor, ME. So, Paul and his parents moved from Portland to Bangor on November 1, 2016. The ME Migrant Education Program (MEP) identifies Paul on July 1, 2017.

1. **If Paul continued to make subsequent moves with his father (the worker), would a new qualifying arrival date (QAD) be established every time Paul moved with his father, even if his father did not make any other moves after his September 1, 2016, qualifying move to Presque Isle where he engaged in qualifying work soon after the move?**
2. **If Paul and his mother had joined Paul's father in Bangor, ME, would that be considered a "to join" move?**
 1. Paul's father's qualifying move to Presque Isle, ME where he engaged in new qualifying work soon after his move established him as a migratory agricultural worker, a status he will

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maintain until August 31, 2019. Each time Paul makes a qualifying move (a move made due to economic necessity; and from one residence to another residence; and from one school district to another school district) with, or to join, his father who is a migratory agricultural worker, a new QAD will be established for Paul. This scenario can play out until August 30, 2019, when Paul's father's status of a migratory agricultural worker expires. That is if, after his September 1, 2016, qualifying move to Presque Isle in which he engaged in qualifying agricultural work, Paul's father did not make any other qualifying moves soon after which he engaged in new qualifying work, and any subsequent COE was approved by August 31, 2019, the date that the father's status as a migratory worker expires.

2. If Paul's father made a qualifying move to Bangor, ME, after he had established himself as a Migratory Agricultural Worker on 10/1/2016, and Paul and his mother made a qualifying move to join him there, that would be considered a "to join" move with the QAD being the date that the worker and the child completed the move to be together. See MEP Non-Regulatory Guidance (NRG) Question E3.