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DEPARTMENT OF EDUCATION

34 CFR Part 222

[Docket ID ED-2015-OESE-0109]

RIN 1810-AB24

Impact Aid Program; Extension of the Application Amendment Deadline

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final rule; Extension of the application amendment deadline.

SUMMARY: The Department of Education (Department) extends the Fiscal Year (FY) 2021 application amendment period for Impact Aid program (IAP) applications, CFDA number 84.041, under sections 7002 and 7003 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). We extend the application amendment deadline from June 30, 2020, to August 31, 2020, by 11:59:59 pm, to allow local educational agencies (LEAs) impacted by the extraordinary circumstances related to the COVID-19 pandemic additional time to submit their amended applications.

DATES: Effective Date of Extension: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Katherine Cox, U.S. Department of Education, 400 Maryland Avenue, SW, room 3e207, Washington, DC 20202. Telephone: (202)453-6886. Email: Impact.Aid@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On September 20, 2016, the Department published final regulations in the *Federal Register* to amend the IAP regulations issued under title VII of the ESEA (84 FR 64727), which govern Impact Aid payments to LEAs. The program, in general, provides assistance to LEAs that are affected by Federal activities.

Under 34 CFR 222.5(a), LEAs must submit any amendments to their FY 2021 IAP applications by June 30, 2020. This document announces that the Department is extending the June 30, 2020, deadline for submitting amendments to the FY 2021 applications to August 31, 2020. The Department is extending this deadline to allow LEAs impacted by the extraordinary circumstances related to the COVID-19 pandemic additional time to submit their amended applications. Applicants submitting amendments under 34 CFR 222.5(b) are not required to submit a written request prior to submitting their application amendments, nor are

they required to submit a copy to their State educational agency, through August 31, 2020.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, Executive Order 13771 does not apply.

We have also reviewed this regulation under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things, and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may

include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final regulation only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this final regulation is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. This extension of the application amendment deadline is not expected to have any costs because it is designed to merely allow additional time for LEAs to submit their FY 2021 application amendments to their Impact Aid applications under 34 CFR 222.5 in light of the extraordinary circumstances related to the COVID-19 pandemic. This extension relates to the procedure we use

for administering the Impact Aid program; there is no additional burden on our stakeholders but rather a benefit, and the additional burden on the Department, if any, is minor.

Waiver of Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Here, there is good cause to waive rulemaking under the public interest exception of the APA.

“The public interest prong of the good cause exception to the APA notice and comment requirement is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.” *Mack Trucks Inc. v. E.P.A.*, 682 F.3d 87, (D.C. App. 2012) (citing *Util. Solid Waste Activities Grp.*, 236 F.3d, 749, 755 (D.C. Cir. 2001)). “It is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—

if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent, and in such a circumstance, notice and comment could be dispensed with in order to prevent the amended rule from being evaded.” *Id.* at 95. The COVID-19 pandemic has resulted in extraordinary circumstances including widespread school closures. The IAP regulations govern Impact Aid payments to LEAs that are affected by Federal activities; these payments are designed to help replace local tax revenue. LEAs rely on Impact Aid for maintenance and operations costs. Many LEAs are experiencing great difficulties and delays in conducting normal operations, and we have had numerous requests for an extension of the amendment deadline. There is not time for public notice and comment prior to the existing June 30 deadline. By extending the date for LEAs to amend their IAP applications under 34 CFR 222.5, this final regulation ensures that the LEAs are not cut off from IAP funding, which would be contrary to the public interest.

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). For the reasons stated above, the Department has concluded

it has good cause, under the public interest exception, to make this rule effective immediately.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

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List of Subjects in 34 CFR Part 222

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Federally affected areas, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, School construction.

Betsy DeVos,
Secretary of Education.

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