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DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-AB24

[Docket ID ED-2015-OESE-0109]

Impact Aid Program; Corrections

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

ACTION: Final regulations; correcting amendments.

SUMMARY: The Department of Education (Department) published final regulations in the *Federal Register* on September 20, 2016 to amend the Impact Aid Program (IAP) regulations issued under title VII of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act. The amendatory instructions at the end of the 2016 final rule inadvertently removed some definitions from these regulations. This document corrects the regulations by adding those definitions back into the Code of Federal Regulations (CFR).

DATES: These regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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 Secretary published final regulations for this program in the *Federal Register* (81 FR 64728). The amendatory instructions for §222.161 resulted in some of the definitions from §222.161 being mistakenly removed. It was not our intention to remove these definitions through that rulemaking and the preamble to the proposed or final rule never indicated that we were removing these definitions. We are taking this action to correct the regulations. The definitions that were removed and that we are adding back in their proper place are: equalize expenditures, local tax revenues, local tax revenues covered under a State equalization program, revenue, State aid, and total local tax.

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)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is "unnecessary" in those situations in which "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." Utility Solid Waste Activities Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 31 (1947) and South Carolina v. Block, 558 F. Supp. 1004, 1016 (D.S.C. 1983).

These regulations merely restore the regulatory definitions as they appeared in the CFR prior to their unintended removal in connection with the 2016 Impact Aid final rule. Because the definitions were originally adopted through notice-and-comment rulemaking and their removal was in error, rulemaking to restore the definitions is unnecessary.

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print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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You may also access documents of the Department published in the *Federal Register* by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number 84.041 Impact Aid)

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.

Dated: September 13, 2018.

Frank Brogan,
*Assistant Secretary for Elementary and
Secondary Education.*

Accordingly, part 222 of title 34 of the Code of Federal Regulations is corrected by making the following amendments:

PART 222--IMPACT AID PROGRAMS

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701-7714, unless otherwise noted.

2. Section 222.161 is amended by revising paragraph (c) to read as follows:

§ 222.161 How is State aid treated under section 7009 of the Act?

* * * * *

(c) *Definitions.* The following definitions apply to this subpart:

Current expenditures is defined in section 7013(4) of the Act. Additionally, for the purposes of this section it does not include expenditures of funds received by the agency under sections 7002 and 7003(b) (including hold harmless payments calculated under section 7003(e)) that are not taken into consideration under the State aid program and exceed the proportion of those funds that the State would be allowed to take into consideration under §222.162.

Equalize expenditures means to meet the standard set forth in §222.162.

Local tax revenues means compulsory charges levied by an LEA or by an intermediate school district or other local governmental entity on behalf of an LEA for current expenditures for educational services. "Local tax revenues" include the proceeds of ad valorem taxes, sales and use taxes, income taxes and other taxes. Where a State funding formula requires a local contribution equivalent to a specified mill tax levy on taxable real or personal property or both, "local tax revenues" include any revenues recognized by the State as satisfying that local contribution requirement.

Local tax revenues covered under a State equalization program means "local tax revenues" as defined in paragraph (c) of this section contributed to or taken into consideration in a State aid program subject to a determination under this subpart, but excluding all revenues from State and Federal sources.

Revenue means an addition to assets that does not increase any liability, does not represent the recovery of an expenditure, does not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, and does not

represent a contribution of fund capital in food service or pupil activity funds. Furthermore, the term "revenue" includes only revenue for current expenditures.

State aid means any contribution, no repayment for which is expected, made by a State to or on behalf of LEAs within the State for current expenditures for the provision of free public education.

Total local tax revenues means all "local tax revenues" as defined in paragraph (c) of this section, including tax revenues for education programs for children needing special services, vocational education, transportation, and the like during the period in question but excluding all revenues from State and Federal sources.

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