

DEPARTMENT OF EDUCATION**34 CFR Part 222****RIN 1810-AA94****Impact Aid Programs**

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues these proposed regulations to implement the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001. The program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid formula funds. These proposed regulations incorporate statutory requirements and provide guidance for applying and qualifying for, as well as spending, the Federal funds provided under this program. These proposed regulations would apply to the grant competitions after fiscal year (FY) 2002.

DATES: We must receive your comments on these proposed regulations on or before November 21, 2003.

ADDRESSES: Address all comments about these proposed regulations to Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6244. If you prefer to send comments through the Internet, use the following address: *Impact.Aid@ed.gov*.

If you want to comment on the information requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1980 section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT:

Marilyn Hall, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6244. Telephone: (202) 260-3858 or via the Internet, at: *Impact.Aid@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Secretary is particularly interested in comments on proposed §§ 222.176, 222.185, and 222.192.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3C101, 400 Maryland Avenue, SW., Washington, DC, 20202-6244 between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

These proposed regulations implement the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Act, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110, enacted January 8, 2002). Final regulations for the FY 2002 grant competition were published in the **Federal Register** on August 16, 2002. These proposed regulations are similar to the final FY 2002 regulations, but we have included clarifying language based on our own experiences in implementing this program. These clarifications are made in sections

222.172, 222.173, and 222.176. These proposed regulations are otherwise substantially identical to the final rule for FY 2002.

The purpose of the Impact Aid Discretionary Construction Program is to assist certain eligible Impact Aid school districts in meeting the emergency or modernization needs of their school facilities.

The following is a summary of the proposed regulatory provisions, such as interpretations of statutory text, and standards and procedures for the operation of the program that the Secretary believes are necessary for implementing the statute. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Section 222.172 What Activities May an LEA Conduct With Funds Under This Program?

The proposed regulations detail the types of construction activities that recipients of emergency and modernization grants may conduct with grant funds. The regulations clarify that allowable repairs and improvements must be for educational facilities, and this does not include improvements to school grounds or teacher housing. These proposed provisions also clarify that both emergency and modernization grants may be used for new construction only if a local educational agency (LEA) holds title to an existing facility and the proposed construction meets the standards detailed in the regulations for determining that improving a current facility is less cost-effective than replacing it.

Section 222.173 What Activities Are Prohibited?

Proposed section 222.173 specifies the various types of activities that may not be supported with grant funds under this program. The statute prohibits using grant funds for acquiring real property but allows these funds to be used for the construction of a new building in limited circumstances. Since a building is also typically considered to be "real property," the proposed provision clarifies, consistent with the authorizing statute, that grant funds cannot be used to acquire an interest in real property except when the Secretary determines under § 222.173 that construction of a new building will be permitted.