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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2018-OESE-0017; Catalog of Federal Domestic Assistance (CFDA) Number 84.144F]

Final Waiver and Extension of the Project Period for the Migrant Education Program Consortium Incentive Grant Program

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

ACTION: Final waiver and extension of the project period.

SUMMARY: The Secretary waives the requirement in the Education Department General Administrative Regulations that generally prohibits project period extensions involving the obligation of additional Federal funds. The waiver and project period extension will enable the 34 current Migrant Education Program (MEP) Consortium Incentive Grant (CIG) program grantees to continue to receive Federal funding for up to an additional 24 months through fiscal year (FY) 2019.

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

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SUPPLEMENTARY INFORMATION:

Background

The MEP CIG program is authorized by section 1308(d) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6398(d)). Through the MEP CIG program, the U.S. Department of Education (Department) provides financial incentives to State educational agencies (SEAs) to participate in high-quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

The Department published a notice of final requirements for the MEP CIG program in the *Federal Register* on March 3, 2004 (69 FR 10109) (2004 Notice), and we have used these final requirements for CIG program competitions since FY 2004. The 2004 Notice established a project period of up to two years for grants awarded under the MEP CIG program. We subsequently published a notice of final requirements for the MEP CIG program in the *Federal*

Register on December 31, 2013 (78 FR 79613) (2013 Notice), in which we increased the CIG project period to three years.

The Department last awarded CIG program grants in FY 2015. Currently, 34 SEAs (out of a total of 46 SEAs that receive MEP formula grant program funds) participate in CIG program-funded consortia.

On April 20, 2018, the Department published a document in the *Federal Register* (83 FR 17516) proposing a waiver of the requirement in 34 CFR 75.261(c)(2). Waiving this requirement will enable the Secretary to provide additional funds to the 34 Consortium Incentive Grant grantees for up to an additional two years. The April 2018 document also invited public comment on the proposed waiver and extension of the project period.

Public Comment

In response to our invitation in the proposed waiver and extension of the project period, the Department received 29 total comments. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raise concerns not directly related to the proposed waiver and extension.

Analysis of Comments and Changes:

Of the 29 comments received, 24 were in support of the

waiver and two were opposed. An analysis of the comments and of any changes in the waiver follows.

Comment: Several of the commenters stated that the waiver would allow for continuous improvement and promotion of interstate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted. Several commenters also noted that the waiver would provide up to two years of additional funding, which would permit grantees to continue coordinating with one another and achieving the goals and objectives of their consortia. Two commenters noted that the waiver would provide the opportunity to create additional materials to address the needs identified in their State, refine the materials already developed, and work to ensure that the materials are widely disseminated and used by migrant programs across the Nation.

Discussion: We appreciate the commenters' support for this waiver.

Changes: None.

Comment: Two comments opposed the waiver and extension of the project period. The first commenter noted that the extension prohibits SEAs that are not currently participating in the program from joining for up to another two years, excludes States from access to Federal funds,

and requires States to remain with the consortium they are currently participating in even if it no longer addresses their needs. A second commenter raised similar concerns, specifically regarding the 12 States that are excluded from funding for the CIGs because of their lack of participation in the current cycle of grants. However, the commenter stated they did not wish to cause a delay in funding to the current consortia, but urged the Department to extend the project period for only one year rather than two. The commenter also expressed regret that the Department did not plan as needed in order to host a grant competition this year.

Discussion: We appreciate the commenters' suggestions and also regret that 12 SEAs will not be able to participate in a CIG project for up to an additional two years. Due to the time needed to consider changes to the priorities, structure, and duration of the CIG program, we believe a waiver of up to two additional years, which will allow the 34 participating States to continue their work and to receive a continuation award in the same amount as their most recent continuation award, is the best course of action. However, we appreciate the commenters' concerns and will work to publish a notice of final requirements and a notice inviting applications as quickly as possible.

Changes: None.

Final Waivers

In the April 2018 document, we discussed the background and purposes of the CIG and our reasons for proposing the waivers. As outlined in that document, providing up to two additional years of funding would permit grantees to continue coordinating with one another and achieving the goals and objectives of their consortium applications as the Secretary considers changes to the priorities, structure, and duration of the CIG program. Based on the progress SEAs generally have made on consortium projects, we believe that current grantees could benefit from a fourth and possibly fifth year in which to continue working on and implementing their CIG program projects.

Moreover, implementing this waiver and extension would ensure that the services provided by the current CIG program grantees continue uninterrupted as the Department supports States in their transition to implement requirements under the ESEA as amended by the Every Student Succeeds Act. During this extension period, the activities of the current CIG program grantees would be modified through work plans, as necessary, to continue the implementation of consortium activities and to support

States as they implement requirements under the amended ESEA.

For all of these reasons, we have concluded that it would be contrary to the public interest to have a lapse in the work of current CIG program grantees while the Secretary considers changes to the implementation of the CIG program and while the Department implements the components of the amended ESEA as described above.

Therefore, the Secretary waives the requirements in 34 CFR 75.261(c)(2), which limits the extension of a project period if the extension involves the obligation of additional Federal funds.

Under this waiver—

(1) Current grantees will be authorized to receive continuation awards annually for up to two years using the CIG funding formula currently in existence.

(2) We will not announce a new competition in FY 2018 or in FY 2019 (if the project period is extended for two years).

(3) During the extension period, any activities carried out must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantees' approved application from the FY 2015 CIG program competition.

(4) Each grantee that receives a continuation award must also continue to comply with the requirements established in the program regulations, the 2004 and 2013 Notices, and the 2015 notice inviting applications for the MEP CIG program (80 FR 6502).

The waiver of 34 CFR 75.261(c)(2) will not affect the applicability of the requirements in 34 CFR 75.253 (continuation of a multi-year project after the first budget period) to any current CIG program grantee that receives a continuation award as a result of the waiver.

Regulatory Flexibility Act Certification

The Secretary certifies that this final waiver and extension will not have a significant economic impact on a substantial number of small entities. None of the affected entities are small entities, as this program makes awards to SEAs.

Paperwork Reduction Act of 1995

This final waiver and extension does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive

order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans and actions for this program.

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Dated: August 9, 2018.

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

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