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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2018-OESE-0122]

Proposed Definitions and Requirements--Alaska Native
Education Program

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

ACTION: Proposed definitions and requirements.

SUMMARY: The Assistant Secretary for the Office of
Elementary and Secondary Education proposes definitions and
requirements under the Alaska Native Education (ANE)
program, Catalog of Federal Domestic Assistance (CFDA)
number 84.356A. These definitions and requirements would
clarify the eligibility requirements for the program, based
upon changes that the Every Student Succeeds Act (ESSA)
made to the Elementary and Secondary Education Act of 1965
(ESEA).

DATES: We must receive your comments on or before [INSERT
DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL
REGISTER].

ADDRESSES: Submit your comments through the Federal
eRulemaking Portal or via postal mail, commercial delivery,
or hand delivery. We will not accept comments submitted by

fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments, address them to Almita Reed, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E222, Washington DC 20202-6450.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue, SW., room

3E222, Washington DC 20202-6450. Telephone: (202) 260-1979. Email: almita.reed@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:

Invitation to Comment: We invite you to submit comments regarding this document. To ensure that your comments have maximum effect in developing the notice of final definitions and requirements, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed definitions and requirements. Please let us know of any further ways we could 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 this document by accessing Regulations.gov. You may also inspect the comments in person in room 3E222, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 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 provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the ANE program is to support innovative projects that recognize and address the unique education needs of Alaska Natives. These projects must include the activities authorized under section 6304(a)(2) of the ESEA, as amended by the ESSA, and may include one or more of the activities authorized under section 6304(a)(3) of the ESEA.

Program Authority: Title VI, part C of the ESEA (20 U.S.C. 7541-7546).

PROPOSED DEFINITIONS:

Background:

The ESEA, reauthorized in December 2015,¹ established new requirements governing eligibility for the ANE program. In Fiscal Year (FY) 2017, the Department conducted the first ANE program grant competition under the new ESEA requirements. Through this document the Department is proposing definitions and requirements that will apply to future competitions.

Prior to the FY 2017 competition, and in June 2018, to gather feedback about how the statutory amendments should be implemented, the Department conducted a Tribal consultation and several listening sessions. These events informed the provisions that governed the FY 2017 competition, announced through a notice inviting applications in the *Federal Register* on May 15, 2017 (82 FR 22323), and the proposed definitions and requirements in this document.

Under section 6304(a)(1) of the ESEA, three types of entities are eligible for grants under the ANE program:

(a) Alaska Native organizations (ANOs) with experience operating programs that fulfill the purposes of the ANE program;

¹ Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

(b) ANOs that do not have experience operating programs that fulfill the purposes of the ANE program, but are in partnership with—

(i) A State educational agency (SEA) or local educational agency (LEA); or

(ii) An ANO that operates a program that fulfills the purposes of the ANE program; and

(c) An entity located in Alaska, and predominately governed by Alaska Natives, that does not meet the definition of an ANO but—

(i) Has experience operating programs that fulfill the purposes of the ANE program; and

(ii) Is granted an official charter or sanction from at least one Alaska Native tribe or ANO to carry out programs that meet the purposes of the ANE program.

For the FY 2017 competition, we waived notice-and-comment rulemaking, as permitted under section 437(d)(1) of the General Education Provisions Act, to define several of these statutory terms related to eligible entities.

In this document, the Assistant Secretary proposes three definitions for this program to clarify these eligibility requirements. These proposed definitions are substantially similar to those used for the FY 2017 competition, but we have made minor adjustments to improve

their clarity. We may apply one or more of these definitions in any year in which this program is in effect.

Proposed Definitions:

Experience operating programs that fulfill the purposes of the ANE program means that the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Department program within the past four years that focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Official charter or sanction means a signed letter or written agreement from an Alaska Native Tribe or ANO that is dated within 120 days of the date of the submission of the application and expressly (1) authorizes the applicant to conduct activities authorized under the ANE program and (2) describes the nature of those activities.

Predominately governed by Alaska Natives means that at least 80 percent of the individuals on the entity's governing board (i.e., the board elected or appointed to direct the policies of the organization) are Alaska Natives.

PROPOSED REQUIREMENTS:

Background: The proposed requirements would clarify the information needed for entities to establish whether they

meet the eligibility requirements, including the proposed definitions, for the program. These application requirements are substantially similar to those used in the FY 2017 ANE competition, but we have made minor adjustments to improve their clarity.

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Proposed Requirement 1--Group Application Requirement.

(a) An ANO that applies for a grant in partnership with an SEA or LEA must serve as the fiscal agent for the project.

(b) Group applications under the ANE program must include a partnership agreement that includes a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) between the members of the partnership identified and discussed in the grant application. Each MOU/MOA must--

(1) Be signed by all partners, and dated within 120 days of the date of the submission of the application;

(2) Clearly outline the work to be completed by each partner that will participate in the grant in order to accomplish the goals and objectives of the project; and

(3) Demonstrate an alignment between the activities, roles, and responsibilities described in the grant application for each of the partners in the partnership agreement.

Proposed Requirement 2--Applicants Establishing Eligibility through a Charter or Sanction from an Alaska Native Tribe or ANO.

For an entity that does not meet the eligibility requirements for an ANO, established in sections 6304(a)(1) and 6306(2) of the ESEA and the proposed definitions in this notice, and that seeks to establish eligibility through a charter or sanction provided by an Alaska Native Tribe or ANO as required under section 6304(a)(1)(C)(ii) of the ESEA, the following documentation is required:

(1) Written documentation demonstrating that the entity is physically located in the State of Alaska.

(2) Written documentation demonstrating that the entity has experience operating programs that fulfill the purposes of the ANE program.

(3) Written documentation demonstrating that the entity is predominately governed by Alaska Natives, including the total number, names, and Tribal affiliations of members of the governing board.

(4) A copy of the official charter or sanction provided to the entity by an Alaska Native Tribe or ANO.

Final Definitions and Requirements:

We will announce the final definitions and requirements in a document published in the *Federal Register*. We will determine the final definitions and requirements after considering comments on the proposed definitions and requirements and other information available to the Department. This document does not preclude us from proposing additional definitions or requirements, or proposing priorities or selection criteria for the ANE program, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these definitions and requirements, we invite applications through a notice in the *Federal Register*.

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 entitlement 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 proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) 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 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action 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 upon 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 these proposed definitions and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in

Executive Order 13563.

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

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits:

We have determined that these proposed definitions and requirements would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these definitions and requirements would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs would outweigh any costs incurred by applicants, and the costs of actually carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be

excessively burdensome for eligible applicants, including small entities.

Paperwork Reduction Act of 1995

These proposed definitions and requirements do not contain any information collection requirements.

Regulatory Flexibility Act

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

Although some of the ANOs, LEAs, and other entities that receive ANE program funds qualify as small entities under this definition, the proposed definitions and requirements would not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the proposed definitions and requirements would be limited to the costs related to providing the documentation outlined in the proposed

definitions and requirements when preparing an application and that those costs would not be significant.

Participation in the ANE program is voluntary. We invite comments from small entities as to whether they believe the proposed definitions and requirements would have a significant economic impact on them and, if so, we request evidence to support that belief.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Adobe Portable Document Format (PDF).

To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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. Dated: December 20, 2018.

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

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