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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID: ED-2018-OESE-0122; CFDA Number: 84.356A.]

Final Definitions and Requirements—Alaska Native Education (ANE) Program

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

ACTION: Final definitions and requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) announces definitions and requirements under the ANE program. The Assistant Secretary may use one or more of these definitions and requirements for competitions in fiscal year (FY) 2019 and later years. We are establishing these definitions and requirements to clarify the eligibility requirements for the program, based upon changes that the Every Student Succeeds Act (ESSA) made to the Elementary and Secondary Act of 1965 (ESEA).

DATES: These definitions and requirements are effective [INSERT DATE 30 DAYS AFTER 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:

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 activities authorized under section 6304(a)(2) of the ESEA, and may include one or more 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).

We published a notice of proposed definitions and requirements for this program (NPP) in the *Federal Register* on December 27, 2018 (83 FR 66655). That document contained background information and our reasons for proposing the particular definitions and requirements.

There is one change to the proposed definitions and requirements in the final definitions and requirements. We are allowing "experience operating programs that fulfill the purposes of this part" to include experience operating either Federal or non-Federal grants serving Alaska

Natives. In addition, we have clarified the definition of "official charter or sanction," the Group Application Requirement, and the definition of "experience operating programs that fulfill the purposes of the ANE program."

Public Comment: In response to our invitation in the NPP, two parties submitted comments on the proposed definitions and requirements.

Analysis of Comments: An analysis of the comments and of any changes in the proposed definitions and requirements since publication of the NPP follows.

Comment: One commenter noted that education service agencies (ESAs) play an important role in the implementation of the ESEA. Specifically, this commenter appeared to request that ESEA section 6304(a)(1)(B)(i) be modified to include ESAs as one of the entities that could serve as a required partner for Alaska Native Organizations (ANOs) without experience operating ANE programs. The commenter recommended a corresponding change to the Group Application Documentation requirement, asking that ESAs be added to the list of entities with whom an ANO may partner.

Discussion: While the Department agrees that ESAs can play an important role in the implementation of ESEA programs, the Department cannot modify statutory language. Such a change would require a legislative change. Similarly,

because the Group Application Documentation requirement is based directly on the statutory list of required partners, we decline to modify that requirement to add ESAs to the list of partner entities.

Changes: None.

Comment: None.

Discussion: Upon further review, we realized that language in the definition of "official charter or sanction" and in the Group Application Requirement was unclear. Both provisions referred to agreements that must be signed and dated "within 120 days of the date of submission of the application." This language did not specify whether the agreements needed to be signed and dated before the submission of the application or could be signed and dated after the submission of the application.

Changes: We have changed both the definition of "official charter or sanction" and the Group Application Requirement to provide that the agreements must be signed and dated within 120 days prior to the date of submission of the application.

Comment: One commenter proposed that we revise the definition of "experience operating programs that fulfill the purposes of the ANE program" to include programs that are not funded with Federal grants.

Discussion: The Department agrees that recipients of non-Federal grants operating programs that fulfill the purposes of the ANE program may have expertise that is relevant to Alaska Native education programs. The Department acknowledges that the knowledge and skills required to manage ANE program grants can also be demonstrated with experience managing non-Department grants. We also believe this change will result in more diversity among applicants, including novice applicants.

Changes: We have changed the definition to include eligibility for entities that have experience managing either Federal or non-Federal grants.

Comment: None.

Discussion: Upon further review, we realized the definition of "experience operating programs that fulfill the purposes of the ANE program" did not make clear whether the four-year timeframe in the definition applies to ANE grants or only to other grants that fulfill the purposes of the ANE program.

Changes: We have modified the definition to clarify that the four-year timeframe applies to both ANE grants and to other grants focused on meeting the unique education needs of Alaska Native children and families in Alaska.

FINAL DEFINITIONS:

The Assistant Secretary establishes the following definitions for the purposes of the ANE program. We may apply one or more of these definitions in any year in which this program is in effect.

Experience operating programs that fulfill the purposes of the ANE program means that, within the past four years, the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Federal or non-Federal program 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 Alaska Native Organization (ANO) that is dated within 120 days prior to 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.

FINAL REQUIREMENTS:

The Assistant Secretary establishes the following requirements for the purposes of the ANE program. We may apply one or both of these requirements in any year in which this program is in effect.

Requirement 1--Group Application Requirement.

An applicant that applies as part of a partnership must meet this requirement.

(1) An ANO that applies for a grant in partnership with a State educational agency (SEA) or local educational agency (LEA) must serve as the fiscal agent for the project.

(2) 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--

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

(ii) 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

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

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 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.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice 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 final 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 final regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final 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 final 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 final 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 final definitions and requirements will impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these definitions and requirements are limited to paperwork burden related to preparing an application. The potential benefits of implementing the program outweighs 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 are not excessively burdensome for eligible applicants, including small entities.

Paperwork Reduction Act of 1995: These final definitions and requirements do not contain any information collection requirements.

Regulatory Flexibility Act: The Secretary certifies that this final regulatory action will 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 final definitions and requirements will not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the final definitions and requirements is limited to the costs related to providing the documentation outlined in the final definitions and requirements when preparing an application and that those costs will not be significant. Participation in the ANE program is voluntary.

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 at: www.govinfo.gov. 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.

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and Secondary Education.*

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