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DEPARTMENT OF EDUCATION

Final Waiver and Extension of the Project Period; Native Hawaiian Career and Technical Education Program

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Final waiver and extension of the project period. [Catalog of Federal Domestic Assistance (CFDA) Number: 84.259A.]

SUMMARY: For the 24-month projects funded in fiscal year (FY) 2013 under the Native Hawaiian Career and Technical Education Program (NHCTEP), the Secretary waives the requirements that generally prohibit project period extensions involving the obligation of additional Federal funds. The Secretary also extends the project period of the seven current grants for up to an additional 24 months. This enables the current NHCTEP grantees to request and continue to receive Federal funding annually for project periods through FY 2016 and possibly through FY 2017.

DATES: The waiver and extension of the project period is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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If you use a telecommunications device for the deaf or  
a text telephone, call the Federal Relay Service, toll  
free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On February 10, 2015, we published in the Federal  
Register (80 FR 7379) a proposed waiver of 34 CFR 75.261(a)  
and (c) (2) and extension of the project period (proposed  
waiver and extension) in order to--

(1) Enable the Secretary to provide additional funds  
to the current NHCTEP grantees with FY 2015 funds and  
possibly FY 2016 funds for project periods through FY 2016  
and possibly through FY 2017; and

(2) Request comments on the proposed waiver and  
extension.

There are no substantive differences between the  
proposed waiver and extension and the final waiver and  
extension.

Public Comment: In response to our invitation in the  
proposed waiver and extension, we received six comments.

Generally, we do not address comments that raise concerns not related to the proposed waiver and extension.

#### Analysis of Comments and Discussion

An analysis of the comments received in response to the proposed waiver and extension follows.

Comment: Almost all commenters supported the proposed waiver and extension of the NHCTEP project period. The commenters provided various reasons for their support of the waiver and extension, including the great need for funding beyond the two-year project period.

One commenter, who supported the proposed waiver and extension, stated that an abrupt suspension in the NHCTEP grantees' training services, as well as outreach, recruitment, academic, and retention efforts, would be detrimental to students who would then have to rely on welfare services instead of vocational training opportunities.

Another commenter stated that the continuity of funding would be a tremendous stabilizing benefit to the program and students. The commenter further stated that NHCTEP grantees have placed students in well-paying jobs with opportunities for advancement and the continuity of support would be more effective in maintaining their high-quality services. The commenter expressed the view that

the extension would also help maximize their recruitment efforts, as well as positively affect the direct participation and completion of the Native Hawaiian students enrolled in NHCTEP-funded projects.

Two commenters indicated that the continuation of an existing NHCTEP grantee's program and its consortium of sub-grantees would allow them to continue to provide valued career and technical education (CTE) services to Native Hawaiian students, including special needs students. Also, the commenters stated that continuation grant awards would allow the consortium to continue providing specialized CTE training that would maximize both the participation and completion of Native Hawaiian students.

Finally, a commenter stated that the proposed waiver and extension would allow NHCTEP-funded projects more time to prepare Native Hawaiian high school students for postsecondary training or the workforce.

Discussion: We appreciate the support of the commenters and agree that extending the current NHCTEP grant period will allow current NHCTEP grantees to continue to work toward accomplishing the goals and objectives stated in their 2013 NHCTEP grant applications, including providing specialized CTE training to Native Hawaiian students. We

agree that it is important that there not be a lapse in programming provided by NHCTEP grantees to CTE students.

Changes: None.

Comment: One commenter asked why the Department used the notice and comment procedures of the Administrative Procedure Act (APA) for this proposed waiver and extension. The commenter characterized the waiver and extension as a general statement of policy that would not fall within the APA's notice and comment rulemaking requirements, and inquired as to why the Department treated the waiver and extension differently. The commenter also cited the APA's exception of interpretive rules and statements of policy from the requirement for rules to have an effective date no fewer than 30 days after their date of publication.

Discussion: The APA defines a "rule" as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" and requires agencies to follow notice and comment procedures when formulating, amending, or repealing rules. 5 U.S.C. 551, 553. As the commenter notes, the APA provides some exceptions to this requirement. For instance, absent another statute to the contrary, the APA exempts "interpretative rules, general statements of policy, or rules of agency organization, procedure, or

practice" from its notice and comment rulemaking requirements. 5 U.S.C. 553(b) (A). In addition, the APA exempts "matter[s] relating to ... loans, grants, benefits, or contracts" from notice and comment rulemaking. 5 U.S.C. 553(a) (2).

However, the General Education Provisions Act limits applicability of the APA's grants exemption to regulations (1) governing the first grant program under a new or substantially revised program authority, or (2) where the Secretary finds that use of notice and comment rulemaking would cause "extreme hardship to the intended beneficiaries of the program affected by such regulations." 20 U.S.C. 1232(d). Neither of those two exceptions was applicable. As a result, the Department followed its standard practice of utilizing notice and comment rulemaking procedures for rules governing its grant programs.

The commenter is correct that the proposed waiver and extension could arguably be construed as an interpretive rule, which would not require use of the APA's notice and comment procedures. See 5 U.S.C. 553(b) (A). However, it is the Department's general practice to err on the side of providing the public with more openness, accessibility and transparency into its actions whenever practicable. This is especially true where, as here, no party is likely to be

adversely affected by the Department's decision to seek notice and comment.

Changes: None.

Background

NHCTEP, authorized by section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (the Perkins Act), supports grants to community-based organizations primarily serving and representing Native Hawaiians. Under this program, grantees carry out projects that provide organized educational activities offering a sequence of courses that--

(a) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(b) Provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(c) Includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical and occupation-specific skills, and knowledge of all aspects of an

industry, including entrepreneurship, of an individual. Projects may include prerequisite courses (other than remedial courses) that meet the definitional requirements of section 3(5)(A) of the Perkins Act (20 U.S.C. 2302(5)(A)).

On June 14, 2013, we published in the Federal Register (78 FR 35877) a notice inviting applications for NHCTEP grants (2013 NIA). Although the Secretary invited applications with a proposed project period of five years in previous NHCTEP competitions, in 2013, in anticipation of congressional reauthorization of the Perkins Act, the Department invited applications with proposed project periods of two years. The project periods for the NHCTEP projects funded under the 2013 NIA are scheduled to end in FY 2015. Because there is the potential for changes in the Perkins Act for NHCTEP beyond 2015, we do not believe it is in the public interest to hold a new NHCTEP competition in FY 2015 for projects that may then operate for just one year, or to announce a competition under which eligible entities would be expected to proceed through the application preparation and submission process while lacking critical information about the future of the program. Further, we do not think that it is in the public

interest to have a lapse in the services currently provided by the NHCTEP grantees.

For these reasons, the Secretary waives the requirements of 34 CFR 75.261(a) and (c)(2) that generally prohibit project period extensions involving the obligation of additional Federal funds and extends the NHCTEP project period for up to 24 months. The waiver and extension will allow the current NHCTEP grantees to request and receive Federal funding annually for project periods through FY 2016 and possibly through FY 2017. We will fund the extended project period by using funds appropriated for FY 2015 or FY 2016, depending on whether the grants are extended for one or two years.

Any activities carried out during the period of a NHCTEP continuation award will have to be consistent with, or a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the FY 2013 NHCTEP competition. The requirements applicable to continuation awards for this competition set forth in the 2013 NIA and the requirements in 34 CFR 75.253 will apply to any continuation awards sought by the current NHCTEP grantees. We will base our decisions regarding continuation awards on the program narratives, budgets, budget narratives, and program performance reports submitted by the current grantees, and the requirements in 34 CFR 75.253.

The waiver and extension will not exempt the current NHCTEP grantees from the appropriation account closing provisions of 31 U.S.C. 1552(a), nor will they extend the availability of funds previously awarded to current NHCTEP grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Department of the Treasury and is unavailable for restoration for any purpose (31 U.S.C. 1552(b)).

Regulatory Flexibility Act Certification

The Secretary certifies that the final waiver and extension and the activities required to support additional years of funding will not have a significant economic impact on a substantial number of small entities. The small entities that will be affected by this waiver and extension are the seven currently funded NHCTEP grantees and any potential applicants.

The Secretary further certifies that the final waiver and extension will not have a significant economic impact on these entities because the extension of an existing project imposes minimal compliance costs, and the

activities required to support the additional years of funding will not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

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

Intergovernmental Review

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

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Dated: July 1, 2015.

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Johan E. Uvin,  
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for Career, Technical, and  
Adult Education.

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