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DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Waivers and Extensions of the Project Periods for the American Indian Vocational Rehabilitation Services Training and Technical Assistance Center and the Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final waivers and extensions of project periods.

SUMMARY: The U.S. Department of Education (Department) waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waivers and extensions enable the current grantees under Catalog of Federal Domestic Assistance (CFDA) numbers 84.250Z and 84.315C to receive funding for an additional budget period, not to exceed September 30, 2021.

DATES: The waivers and extensions of the project periods are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background:

The purpose of the American Indian Vocational  
Rehabilitation Services Training and Technical Assistance  
Center (Center) is to provide training and technical  
assistance (TA) to governing bodies of Indian Tribes, or  
consortia of those governing bodies, that have received an  
American Indian Vocational Rehabilitation Services (AIVRS)  
grant under section 121(a) of the Rehabilitation Act of  
1973, as amended (Rehabilitation Act), to improve the  
delivery of vocational rehabilitation (VR) services to  
American Indians with disabilities.

The purpose of the Vocational Rehabilitation Training  
Institute for the Preparation of Personnel in American  
Indian Vocational Rehabilitation Services (Institute) is to  
prepare AIVRS project personnel in VR, specifically the  
development of a structured program of training for AIVRS

personnel with limited knowledge or experience in the VR field to improve the delivery of VR services to American Indians with disabilities.

Taken together, the Center and the Institute comprise the total resources for the provision of training and TA to the AIVRS projects. In practice, the foundational academic training provided by the Institute compliments and provides a knowledge base for the more focused training and TA provided by the Center. For this reason, the Department has decided to combine the waivers and extensions for both programs into this single document.

In fiscal year (FY) 2015, the Department published in the *Federal Register* notices inviting applications (NIAs) announcing the grant competition for the Center under CFDA 84.250Z and the Institute under CFDA 84.315C. The Department funded one cooperative agreement for each program for a 60-month period that will expire September 30, 2020.

In early spring 2020, the effects of the COVID-19 pandemic began to be felt in the United States. American Indian reservations experienced and continue to experience a high rate of COVID-19 infections and have limited medical resources to treat those infected. Many of the AIVRS grantees across the country took actions to limit the

spread of COVID-19 by requiring their nonessential personnel to work from home. AIVRS projects were confronted with the need to continue to provide VR services in a virtual environment and to continue to work with AIVRS project participants, service providers, educational and training resources, and employers in the new virtual environment.

While there are some technology challenges on and near the reservations, the Center and the Institute responded to the challenge of assisting AIVRS projects in several ways. The Center surveyed AIVRS project needs and responded by providing to AIVRS project staff training in use of virtual platforms (including use of social media) for communication with VR participants, external service providers, and training institutions, and for internal AIVRS project purposes. The Center partnered with the Institute and the Workforce Innovation Technical Assistance Center to continue to develop training and TA content for virtual delivery. An important area of training and TA content was how to work virtually with AIVRS participants to proceed through the VR process in a virtual environment. The Center's technical staff maintained "office hours" to provide one-on-one technical support to AIVRS projects trying to deliver VR services to applicants and eligible

AIVRS project participants. The Institute conducted three virtual "coffee breaks" so far during COVID-19. The purpose of the coffee breaks is for AIVRS participants to learn more about a topic area or issue identified by AIVRS project staff that is relevant to providing VR services to American Indians with disabilities. Most recently, the Center provided training and TA to the AIVRS projects on safe ways to reopen, including the use of social distancing and continued use of virtual communication methods. Both the Institute and the Center have maintained or adapted their methods of training and TA provision to continue to provide virtual services to AIVRS project staff in all content areas. Recent increases in COVID-19 activity suggest that protective and safety measures will be required for some time and that maintenance of some of the new virtual ways of doing business will likely continue to be necessary.

Upon award of a new grant, typically there is a period in which grantees are hiring new staff and developing their own resources and content capacities, which may take several months. Due to the impact of COVID-19 and the immediate needs of the beneficiaries of the Center and the Institute, the Department has decided to extend the existing Center and Institute programs. These existing

grantees are providing direct training and TA related to operating in the current environment and, therefore, the Department has decided not to hold a new competition that could create a temporary reduction in the availability of the training and TA support at a time when such assistance is most needed.

The Department is waiving the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as waiving the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds and extending the project periods of the grants. The waivers and extensions will enable the Department to provide additional funds to the Center under CFDA 84.250Z and to the Institute under CFDA 84.315C for an additional budget period, not to exceed September 30, 2021.

This action allows the Center and the Institute to request FY 2020 continuation funding. The funds for the Center will come from funds allotted under section 121(c)(2) of the Rehabilitation Act. Funds for the Institute will be provided from the funds allotted under section 21 of the Rehabilitation Act as in previous years. Decisions regarding continuation awards will be based on

the program narratives, budgets, budget narratives, and program performance reports submitted by the grantees. Any activities to be carried out during the year of continuation awards would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's application as approved following the FY 2015 CFDA 84.250Z and CFDA 84.315C competitions. The FY 2015 NIAs will continue to govern the projects during the extension year. The current Center and Institute grantees may request continuation awards in FY 2020 for budget periods through FY 2021.

Final Waivers and Extensions:

For these reasons, the Department does not believe that it is in the public interest to hold a new competition for the Center, CFDA 84.250Z, or the Institute, CFDA 84.315C, in FY 2020. Extending the project period of the Center and the Institute, currently in their fifth year, will allow for more efficient use of the funding and avoid any interruption in services that might result from holding a new competition. The Department intends to hold a competition for a new Center under CFDA 84.250Z and a new project under 84.315C in FY 2021.

The Department waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five

years, as well as the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. This waiver allows the Department to issue a one-time continuation award in FY 2020 to the Center and the Institute, currently funded under CFDA 84.250Z and CFDA 84.315C, estimated as follows:

Grantee Name	Amount
University of Northern Arizona (Center, Project Number: 250Z150002)	\$774,000 (section 121(c)(2) funds)
Northwest Indian College (Institute, Project Number: H315C150002)	\$166,000 (section 21 funds)

Waiver of Notice and Comment Rulemaking and Delayed Effective Date under the Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for

good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

Generally, the "good cause" exception to notice and comment rulemaking under the APA (5 U.S.C. 553(b)(3)(B)) is to be "narrowly construed and only reluctantly countenanced." *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir. 1992) (quoting *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)). The exception excuses notice and comment in emergency situations, *Am. Fed'n of Gov't Employees v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981), or where delay could result in serious harm. See *Hawaii Helicopter Operators Ass'n v. FAA*, 51 F.3d 212, 214 (9th Cir.1995).

The COVID-19 pandemic struck during the second half of FY 2020 and, as explained above, created a situation where the Tribes were dealing with overwhelmingly challenging circumstances. The Department determined that, with Tribal resources and attention devoted to addressing concerns created by the pandemic, the Tribes were in need of the training and TA resources available from the Center and the Institute, without interruption, in order for the Tribal AIVRS projects to continue to deliver services to Tribal members with disabilities. For this reason, it is

necessary for the Department to extend the grants awarded under CFDA 84.250Z and CFDA 84.315C for an additional year. There is insufficient time left in FY 2020 to adopt these waivers and extensions of the project periods through notice and comment rulemaking and to make the continuation awards to the two expiring grants. The failure to extend the existing grants for an additional year would result in an interruption of essential services to the AIVRS projects and the American Indians with disabilities who rely upon them. In addition, the Department is unique among Federal agencies in that it must go through notice and comment rulemaking under the APA to make its grants. The exception in the APA exempting grants from notice and comment generally does not apply to the Department. 5 U.S.C. 553(a)(2); 20 U.S.C. 1232(d). In short, in the unusual circumstances here, notice and comment rulemaking is both impracticable and not in the public interest.

The APA also requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). It is crucial that the funded grantees under CFDA 84.250Z and CFDA 84.315C continue to provide services through all of FY 2021. A delayed effective date would be contrary to public interest by prolonging uncertainty about

the continuation of training and TA to AIVRS projects that provide VR services to American Indians with disabilities living on or near a reservation. Therefore, the Department waives the delayed effective date provision for good cause.

#### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking, because there is good cause to waive notice and comment rulemaking under 5 U.S.C. 553.

#### Paperwork Reduction Act of 1995

These waivers and extensions of the project periods do not contain any information collection requirements.

#### Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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Mark Schultz,  
*Commissioner, Rehabilitation  
Services Administration,  
Delegated the authority to perform  
the functions and duties of the  
Assistant Secretary for the Office  
of Special Education and  
Rehabilitative Services.*

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