

**SUPPORTING STATEMENT****FOR PAPERWORK REDUCTION ACT SUBMISSION****OMB Number: 1810-New Revised 02/01/2018****A. Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a hard copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information, or you may provide a valid URL link or paste the applicable section. Please limit pasted text to no longer than 3 pages. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, make note of the sections or changed sections, if applicable.**

*This is a request for emergency clearance to collect critical information for the Application for Flexibility for Equitable Per-pupil Funding, the instrument through which local educational agencies (LEAs) apply for flexibility to consolidate eligible Federal funds and State and local education funding based on weighted per-pupil allocations for low-income and otherwise disadvantaged students. This program allows LEAs to consolidate funds under the following Federal education programs:*

## Elementary and Secondary Education Act of 1965 (ESEA)

Title I, Part A	Improving Basic Programs Operated by Local Educational Agencies
Title I, Part C	Education of Migratory Children
Title I, Part D, Subpart 2	Local Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk
Title II	Preparing, Training, and Recruiting High-quality Teachers, Principals, or Other School Leaders
Title III	Language Instruction for English Learners and Immigrant Students
Title IV, Part A	Student Support and Academic Enrichment Grants
Title VI, Part B	Rural Education Initiative

*On December 10, 2015, the programs above were reauthorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The ESSA added a new program to the ESEA, the Flexibility for Equitable Per-pupil Funding under section 1501. This discretionary flexibility allows the U.S. Department of Education (Department) to offer an LEA the opportunity to consolidate funds under the above-listed programs to support the LEA in creating a single school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students, with attendant flexibility in using those funds. For the initial three-year period, the Department may approve this flexibility for up to 50 LEAs.*

*Since the reauthorization of the ESEA in December 2015, the Department has been supporting States with an orderly transition to the new law, which spans dozens of programs and includes hundreds of provisions.*

*To briefly summarize the timeline following enactment, States were permitted to continue operating under the flexibility granted by waivers under the ESEA as amended by No Child Left Behind (NCLB) until September 2016. For Fiscal Year 2016 (FY16), formula grant funds were awarded using the same formulas as were used during Fiscal Year 2015 (FY15) under NCLB. For FY 2017, in order to receive federal funds, the Department required States to provide a set of assurances related to the programs covered under the ESEA that may be included in a consolidated state plan. For FY 2018 and beyond, the Department has worked closely with States to develop, review, revise and approve consolidated state plans that cover the programs within the ESEA.*

*Given the priority of an orderly transition, the earliest available time to award flexibility related to the use of federal funding was School Year 2018-2019, which mostly takes place during FY 2019. This aligns with States transition to “full” compliance, as all provisions of the law will be effective by FY 2019, including those that were otherwise delayed under orderly transition authority. This timeframe also aligns with the implementation of the other pilot program provided in ESSA, the Innovative Assessment Demonstration Authority (IADA).*

*Although an approximate timeframe was established, by necessity, the planning for a new and potentially far-reaching program could not begin in earnest until new political leadership had been appointed. This planning began in mid-2017 following the appointment of Secretary DeVos and other political leadership.*

*The scope of work for the development of the application was significant. The program is entirely new and involves broad authority for the Secretary to waive provisions of the ESEA, although only after a successful applicant meets several dozen precise and technical requirements related to the allocation, use and reporting of funds. Given that the program is new and highly technical, affects the use of federal funds, waives other federal requirements, and involves a potential applicant pool of thousands of school districts, the development of an application required significant legal and policy analysis, which lasted several months.*

*Lastly, between enactment of ESSA and the present date, there were also several major anticipated and unanticipated events, including a change in Presidential and Secretarial administration, Congressional action that eliminated certain implementing regulations of the law, and significant turnover in staff related to both the change in administration and natural attrition over a period of multiple years. These events impact the capacity, decision-making structure, and institutional knowledge of the Department, causing it to be less agile and to move at a slower velocity for some period. Fortunately in recent months that has changed. However, due to these events, including some that were unforeseen, as well as the other conditions described in the paragraphs above, the development of the application was affected.*

*The end result remains that a traditional paperwork clearance would have resulted in applicants being unable to use the awarded flexibility until the 2019-2020 school year, which would delay a*

*program that Congress intended to equitably allocate resources to educationally disadvantaged students. Therefore, the Department is seeking emergency clearance.*

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

*The Department will use the information from each LEA's application for flexibility to consolidate eligible Federal funds and State and local education funding as the basis for approving flexibility requests. Consistent with ESEA section 1501(k) regarding renewal of local flexibility demonstration authority, the Secretary will evaluate the implementation and impact of the program in particular LEAs to determine if the LEA's agreement should be renewed for additional three year terms. Further, information from the collection will form the basis of the program evaluation under ESEA section 1501(j), to be completed through the Director of the Institute of Education Sciences. Results of this evaluation influence whether the Secretary may expand the program under section 1501(c)(3).*

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Also describe any consideration given to using technology to reduce burden.**

*LEAs will be encouraged to submit information under this collection in electronic format.*

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2 above.**

*The Department evaluated existing standard forms to consider whether they could be used for this purpose. As this opportunity provides LEAs with flexibility from statutory requirements, rather than funds, existing forms did not appear to meet the unique purpose of this program.*

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.**

*Small businesses have not been impacted by this data collection. This information collection requirement may impact small Local Educational Agencies (LEAs), but the Department will limit the collection to only that information necessary to approve an application for flexibility, in order to minimize the burden on small entities.*

**6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

*Not collecting this information would prohibit the Department from offering flexibility through this program. The statute identifies very specifically the required elements of the application and the resulting system in section 1501(d). Accordingly, the Department must collect the information specified in the statute.*

*The Department would like to offer this flexibility to LEAs immediately. Because the flexibility deals with allocating Federal, State and local funds to schools within an approved LEA, it is necessarily time sensitive. An LEA typically decides how to allocate funds to schools in the spring of the year prior to when those funds will be used so that its schools can make plans for how best to use their funds—and then does not make subsequent decisions until the following spring, a full year later. Moreover, because this is a new authority that will significantly affect how an LEA uses eligible Federal funds, along with State and local funds, it is imperative that an LEA have sufficient time to decide whether to apply for the flexibility and then to rethink its funding priorities. If the Department cannot announce this flexibility very soon, it will lose another year before LEAs can take advantage of the new authority because their funding decisions for the 2018-2019 school year will already be established.*

*While the text of section 1501 of the ESEA assumes that the Department would begin to implement this program for the 2016-2017 school year, the Consolidated Appropriations Act of 2016 clarified that formula funds under the ESEA would continue to be administered consistent with the ESEA, as amended by the No Child Left Behind Act of 2001 for the 2016-2017 school year. Although section 1501 of the ESEA does not directly provide funding, it relates to funding distributed under the above-mentioned programs, and so it was not logical to begin implementing this program during the 2016-2017 school year, while those programs continued to operate under the previous version of the ESEA. The Department was unable to offer this flexibility earlier in the 2017-2018 school year due in large part to the wholesale revision of the consolidated State plan (application for State funding under formula programs authorized by the ESEA) that was necessitated by the joint resolution of disapproval of the State plan regulations under the Congressional Review Act, and the considerable effort required to review 52 consolidated State plans, which is still ongoing. Therefore, it is imperative that the Department begin collecting this information immediately.*

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

- **in connection with a statistical survey, that is not designed to produce valid and reliable results than can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

*There are no special circumstances that apply to this collection.*

- 8. As applicable, state that the Department has published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

*The Department is seeking emergency clearance from OMB for initiation of this information collection under 5 CFR 1320.13. Due to time constraints, the Department has published an emergency Federal Register Notice and will publish a 60- and 30-day Federal Register notice seeking public comment. The emergency information collection is designed to collect only the information essential to carrying out statutory requirements for this program.*

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees with meaningful justification.**

*No payments or gifts are involved in this information collection. Although this statutory authority offers funding flexibility at the local level, Congress did not appropriate additional funds for this demonstration initiative. Thus, the Department will also not award any additional Federal funds to a successful applicant.*

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If personally identifiable information (PII) is being collected, a Privacy Act statement should be included on the instrument. Please provide a citation for the Systems of Record Notice and the date a Privacy Impact Assessment was completed as indicated on the ICRAS' Part 2 IC form. A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided. Requests for this information are in accordance with the following ED and OMB policies: Privacy Act of 1974, OMB Circular A-108 – Privacy Act Implementation – Guidelines and Responsibilities, OMB Circular A-130 Appendix I – Federal Agency Responsibilities for Maintaining Records About Individuals, OMB M-03-22 – OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, OMB M-06-15 – Safeguarding Personally Identifiable Information, OM:6-104 – Privacy Act of 1974 (Collection, Use and Protection of Personally Identifiable Information). If the collection is subject to the Privacy Act, the Privacy Act statement is deemed sufficient with respect to confidentiality. If there is no expectation of confidentiality, simply state that the Department makes no pledge about the confidentiality of the data.**

*There is no assurance of confidentiality provided to respondents with regard to required information. We do not request any Personally Identifiable Information.*

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

*This collection does not ask questions of a sensitive nature.*

- 12. Provide estimates of the hour burden of the collection of information. The statement should:**
- **Indicate the number of respondents by affected public type (federal government, individuals or households, private sector – businesses or other for-profit, private sector – not-for-profit institutions, farms, state, local or tribal governments), frequency of response, annual hour burden, and an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. All narrative should be included in Question 12. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form. (The table should at minimum include Respondent types, Number of Respondents and Responses, Hours/Response, and Total Hours)**
- **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Question 14.**

*The Department estimates that approximately 20 LEAs will apply for this flexibility and that it will take approximately 56 hours for each of them to complete the application. Assuming that individuals at the LEA of varying career levels work on the project, we estimate an average of about \$40/hour, which is roughly equivalent to the Federal GS-12 level. Accordingly, we anticipate a total cost of \$44,800.*

<i>Respondent Type</i>	<i>Number of Responses</i>	<i>Estimated Burden Hours per Respondent</i>	<i>Total Hours</i>	<i>Total Cost (total hours x \$40)</i>
<i>New Applicants</i>	<i>20</i>	<i>56</i>	<i>1,120 hours</i>	<i>\$44,800</i>
		<b><i>Total:</i></b>	<i>1,120 hours</i>	<i>\$44,800</i>

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Questions 12 and 14.)**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and acquiring and maintaining record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis**

associated with the rulemaking containing the information collection, as appropriate.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices. Also, these estimates should not include the hourly costs (i.e., the monetization of the hours) captured above in Question 12.**

**Total Annualized Capital/Startup Cost:**

**Total Annual Costs (O&M):**

**Total Annualized Costs Requested:**

*This information collection does not require the use of capital, start-up, operation and maintenance, or purchase costs.*

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Questions 12, 13, and 14 in a single table.**

*We estimate that Federal staff will spend an average of 16 hours per LEA per year to review this information. With 20 LEAs, we estimate 320 total hours of review. Different staff members at different pay levels are likely to participate in review, so we will use \$40 as the average hourly rate, which is approximately the GS-12 level for a Federal employee in Washington, DC. At \$40 per hour, the 320 total hours of review comes to an annual cost of \$12,800 to the Federal government.*

- 15. Explain the reasons for any program changes or adjustments. Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are result of new statute or an agency action (e.g., changing a form, revising regulations, redefining the respondent universe, etc.). Burden changes should be disaggregated by type of change (i.e., adjustment, program change due to new statute, and/or program change due to agency discretion), type of collection (new, revision, extension, reinstatement with change, reinstatement without change) and include totals for changes in burden hours, responses and costs (if applicable).**

*This is the first time this information collection is being conducted; there is a program change increase of 1,120 annual burden hours.*



**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used.**

Though the Department may publish the applications in full, there are no plans at this time for publishing complex analyses of the data contained in the applications.

**Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

The Department intends to release the application on February 7, 2018, requesting that LEAs submit their applications by 4:30 pm, Washington DC time on March 12, 2018. The Department will then complete a review of the applications, making announcements of awarded LEAs in late spring 2018. LEAs will begin implementing the flexibility in the 2018-2019 school year, with three years of flexibility awarded at the outset. The Department will clear the application through the regular 60-day and 30-day comment periods concurrently with the review of applications and initial implementation in 2018.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

*The expiration date for OMB approval of the information collection will be displayed.*

**18. Explain each exception to the certification statement identified in the Certification of Paperwork Reduction Act.**

*We do not propose any exceptions to the certification statements identified in the Certification of Paperwork Reduction Act.*