

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

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 section¹. 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.

The U.S. Department of Education (the Department) published a Notice of Proposed Rulemaking (NPRM) for the “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” on November 29, 2018 (Vol. 83, No. 230, pages 61462- 61499). Based on comments received regarding the NPRM, the Department has made changes to those proposed regulations and these changes have adjusted the proposed burden for affected entities complying with the final regulations as noted below.

The final regulations do not include Section 106.44(b)(3) as proposed in the NPRM, which provided recipients a safe harbor with respect to supportive measures. The proposed burden has been removed from this collection.

Section 106.45(b)(2) *Notice of Allegations* requires all recipients, upon receipt of a formal complaint, to provide written notice to the complainant and the respondent, informing the parties of the recipient’s grievance process and providing sufficient details of the sexual harassment allegations being investigated. This written notice will help ensure that the nature and scope of the investigation, and the recipient’s procedures, are clearly understood by the parties at the commencement of an investigation.

Section 106.45(b)(9) *Informal resolution* requires that recipients who wish to provide parties with the option of informal resolution of formal complaints, may offer this option to the parties but may only proceed by: first, providing the parties with written notice disclosing the sexual harassment allegations, the requirements of an informal resolution process, any consequences from participating in the informal resolution process; and second, obtaining the parties’ voluntary, written consent to the informal resolution process. This provision permits—but does not require—recipients to allow for voluntary participation in an informal resolution as a method of resolving the allegations raised in formal complaints without completing the investigation and adjudication. Additionally, recipients may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

¹ Please limit pasted text to no longer than 3 paragraphs.

Section 106.45(b)(10) requires recipients to maintain certain documentation regarding their Title IX activities. Recipients would be required to maintain for a period of seven years records of: sexual harassment investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under § 106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity; any appeal and the result therefrom; any informal resolution; and all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Additionally, for each response required under § 106.44(a), a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. The Department clarifies in these final regulations that if a recipient does not provide a complainant with supportive measures, then such documentation must include the reasons why such a response was not clearly unreasonable in light of the known circumstances. This information will allow a recipient and OCR to assess on a longitudinal basis the prevalence of sexual harassment affecting access to a recipient's programs and activities, whether a recipient is complying with Title IX when responding to reports and formal complaints of sexual harassment, and the necessity for additional or different measures, including any remedial actions under § 106.3(a).

The Secretary has authority to regulate, with regard to discrimination on the basis of sex, specifically under 20 USC 1682 and generally under 20 USC 1221e-3 and 3474.

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 information collected regarding documentation of a recipient's Title IX activities will allow recipients, students and employees, among others, and the Department to assess on a longitudinal basis the prevalence of sexual harassment affecting access to a recipient's programs and activities, whether a recipient is complying with Title IX when responding to reports and formal complaints of sexual harassment, including offering supportive measures to complainants, and the need for additional or different training. The information collected and given to parties involved in sexual harassment reports and formal complaints relating to procedural rights ensure that the nature and scope of any investigation of a formal complaint is understood by all parties; and ensure that parties understand the process and consequences of voluntarily participating in any informal resolution of a formal complaint.

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.

No electronic processes are required to collect data regarding these information collection activities, although in the ordinary course of an enforcement investigation (at such time as the requirements of the final rule have become effective) the Department may inquire with a respondent via email about the documents maintained by the respondent in compliance with the recordkeeping and written notice requirements in the final rule.

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 Item 2 above.

The Department is not aware of existing sources of the information required under the proposed collection activities.

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.

The final collection activities would affect small entities who are recipients of federal financial assistance. The final rule minimizes the burdens on small entities by not requiring particular collection techniques or forms of information technology, leaving small entities flexibility to select the techniques and technology least burdensome for their needs.

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.

The collection activities under the final rule are important to achieving the policy aims – namely, to assisting recipients, students and employees, among others, and the Department in tracking the effectiveness of recipients' compliance with Title IX, and ensuring that persons reporting sexual harassment or involved as a party in a sexual harassment formal complaint understand their rights and responsibilities during such a process. Without the recordkeeping requirements, parties involved in sexual harassment reports and complaints at educational institutions, and the Department in

its enforcement of sexual harassment regulations, would have less reliable access to documentation detailing a respondent's Title IX activities. Without the written notice requirements, parties involved in sexual harassment reports and complaints would be less assured of receiving adequate information about the respondent's policies and procedures.

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.

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 entities from whom information is to be obtained or those who must compile records was made available through the NPRM comment period. Comments regarding burden were received and are noted in the preamble of the Final Rule. Changes were made to the initial estimated burden, respondents and responses based on changes made to the regulations.

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

No gifts or incentives will be provided to respondents.

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 IC Data Form. A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided.² 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 are no assurances of confidentiality.

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.

Given the nature of the issues being reported (i.e., sexual harassment allegations), the recordkeeping and reporting will contain discussions of a sensitive nature. In order to effectively follow the regulations every effort will be made to protect the information provided in statements and reports and only allow access to those who require it to meet the regulations.

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 item 12. Unless directed

² 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)

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 and aggregate the hour burdens in the ROCIS IC Burden Analysis Table. (The table should at minimum include Respondent types, IC activity, Respondent 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 Item 14.

The final regulations no longer include Section 106.44(b)(3) as proposed in the NPRM, which provided recipients a safe harbor with respect to supportive measures. The proposed burden has been removed from this collection estimate.

Section 106.45(b)(2): *Notice of Allegations* requires all recipients, upon receipt of a formal complaint, to provide written notice to the complainant and the respondent, informing the parties of the recipient's grievance process and providing sufficient details of the sexual harassment allegations being investigated.

For the activity required under final section 34 CFR 106.45(b)(2), the Department estimates the number of affected respondents to be 16,606 LEAs, 6,766 IHEs and 600 other entities that are recipients of Federal financial assistance; each under a burden of the required notices of 1.5 hours; with an annual hour burden estimated at 35,958 hours in Year 1 and 0 hours in subsequent years (23,972 respondents x 1.5 hours = 35,958). The estimated costs to the respondents are a total of \$2,650,654.

Section 106.45(b)(9): *Informal resolution* requires that recipients who wish to provide parties with the option of informal resolution of formal complaints, may offer this option to the parties but may only proceed by: first, providing the parties with written notice disclosing the sexual harassment allegations, the requirements of an informal resolution process, any consequences from participating in the informal resolution process; and second, obtaining the parties' voluntary, written consent to the informal resolution process.

For the activity required under final section 34 CFR 106.45(b)(9), the Department estimates the number of affected respondents to be 16,606 LEAs, 6,766 IHEs and 600 other entities that are recipients of Federal financial assistance; each under a burden of the required notices of 1.5 hours ; with an annual hour burden estimated at 35,958

hours in Year 1 and 0 hours in subsequent years (23,972 respondents x 1.5 hours = 35,958). The estimated costs to the respondents are a total of \$2,650,654.

Section 106.45(b)(10): *Recordkeeping* requires recipients to maintain certain documentation regarding their Title IX activities.

For the activity required under final section 34 CFR 106.45(b)(10), the Department estimates the number of affected respondents to be 16,606 LEAs, 6,766 IHEs and 600 other entities that are recipients of Federal financial assistance; each under a burden of recordkeeping of 12 hours for the LEAs and other entities and 104 hours for IHEs in the first year of these regulations with an annual hour burden estimated at 910,316 hours and \$39,114,530 in Year 1.

For the activity required under final section 34 CFR 106.45(b)(10), the Department estimates the number of affected respondents to be 16,606 LEAs, 6,766 IHEs and 600 other entities that are recipients of Federal financial assistance; each under a burden of recordkeeping of 6 hours for the LEAs and other entities and 52 hours for IHEs in the Years 2-3 to recognize the difference between development and maintenance. The estimated annual burden is 455,068 hours and \$15,189,260 for a total in years 2-3 of an estimated burden of 910,136 hours and \$30,378,520.

For Section 106.45(b)(10) in Years 1-3, we estimate a total of 1,820,272 hours and \$69,493,050 costs for 23,972 respondents.

For all of the sections above the three-year calculations are 23,972 respondents with 119,860 responses at 1,892,188 burden hours for an estimated \$74,794,358 costs. See the table below.

Estimated Annual Burden and Respondent Costs Table

Information Activity or IC (with type of respondent)	Number of Respondents	Number of Responses	Average Burden Hours per Response	Total Annual Burden Hours	Total Annual Costs (hourly wage x total burden hours)
106.45(b)(2) Year 1	23,972	23,972	1.5	35,958	\$2,650,654
106.45(b)(9) Year 1	+	23,972	1.5	35,958	\$2,650,654
106.45(b)(10) Year 1	+	16,606	12	199,272	*
106.45(b)(10) Year 1	+	6,766	104	703,664	*
106.45(b)(10) Year 1	+	600	12	7,200	\$39,114,530
106.45(b)(10) Years 2 & 3	+	33,212	6	199,727	**
106.45(b)(10) Years 2 & 3	+	13,532	52	703,664	**
106.45(b)(10) Years 2 & 3	+	1,200	6	7,200	\$30,378,520
TOTALS	23,972	119,860		1,892,188	\$74,794,358

+ Is used to avoid double counting the actual universe of estimated respondents.

*The estimated annual cost was calculated as a total for all three subcategories of respondents.

**The estimated annual cost for year 2 and 3 is \$15,189,260 for each year

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 Items 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 Item 12

Total Annualized Capital/Startup Cost:

Total Annual Costs (O&M):

Total Annualized Costs Requested:

There are no costs to respondents not recorded in item 12.

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 Items 12, 13, and 14 in a single table.

There are no costs 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 a new request based on regulatory change; therefore, all burden is new. This program change results in an increase in burden and responses which is estimated as a total of 1,892,188 hours and \$74,794,358 costs for 23,972 respondents for years 1-3.

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. 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.

No information will be published.

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.

We are not seeking this approval.

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

No exceptions are necessary for this information collection.