

# **<sup>1</sup>Supporting Statement A**

## **Consolidated Waiver Request Form**

**OMB Control Number 1076-NEW**

**Terms of Clearance:** None.

### **General Instructions**

**A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.**

### **Specific Instructions**

#### **Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Bureau of Indian Education (BIE) is seeking emergency review and approval of an information collection. BIE’s waiver request form will allow BIE-funded schools to request waivers for certain regulations for School Year 2020-2021.

This collection must be conducted before the beginning of the 2020-2021 school year to ensure that a quality education will be provided for the students served at BIE-funded schools during the COVID-19 pandemic. The waiver request form will be sent to BIE-funded schools in conjunction with the disbursement of BIE’s school reopening plan and toolkits, which is scheduled to be sent to schools no later than mid-August. BIE held tribal consultations in July 2020 and received numerous comments from stakeholders requesting waivers. BIE anticipates the opening of the 2020-2021 school year will be conducted remotely. School administrators need to plan for instructional learning and create distance learning plans, they also need to finalize their budget.

The waiver requests will help to ensure continuity of learning and compliance with special education and related aids and services requirements for schools which, due to COVID-19

related safety concerns, need to make modifications to their operations and delivery of services. Special education services vary widely and do include health-related accommodations. The coupling of not providing continuity of learning, and, for example, health related accommodations could have a serious effect on academic performance and mental health.

The waivers listed on the waiver request form are not new policy, but instead are an exercise of the regulatory provision granting the Assistant Secretary-Indian Affairs (AS-IA) waiver authority. Specifically, AS-IA will review applications for BIE waivers pursuant to 25 CFR 1.2, which states that the Secretary of the Interior, whose authority in this area has been delegated to AS-IA, may waive "waive or make exceptions to [the] regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians." AS-IA approves the BIE school waivers at issue here under that authority, as AS-IA has in the case of every other valid exercise of the Section 1.2 waiver process, upon AS-IA's determination that so long as BIE schools satisfied the waiver requirements, an approved waiver would be in the best interest of Indians. BIE-funded schools have always had the option under 25 CFR 1.2 to request a waiver of any BIE 25 CFR subchapter E regulation. This form simply makes it easier for them to do so.

**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. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

The waiver request form will be sent to BIE-funded schools in conjunction with the disbursement of BIE's school reopening plan. The form allows these schools to request waivers for regulations relating to the following areas: Indian Student Equalization Program, transportation requirements (25 CFR §§39.710-711), annual bus transportation miles for residential students (25 C.F.R. § 39.711), annual commercial transportation costs for residential students (25 C.F.R. § 39.702 - 704), residential requirements (25 CFR §§39.216-221), instructional hours (25 CFR §39.214), instructional programs (25 CFR §§36.20-24), student activities (25 CFR §36.43), graduation requirements (25 CFR §§36.32(a) and (b)), promotion (25 CFR §36.31(c)), accreditation (25 C.F.R. §36.50), and gives schools the option to write in any other BIE regulations that are not included on the form.

The form also asks BIE-funded schools to submit a plan for alternative to full-time in-school instruction to students. The written description of the school's alternative learning plan must detail how any included virtual learning component will incorporate interactive instruction, assessments to measure mastery of instruction, and individualized student support. Submission of a learning plan is necessary to ensure the requested waivers are issued in the best interest of Indians.

The waiver request form was created to drastically reduce the burden on BIE-funded schools. Any school that is not operating with in-person instruction and/or at typical capacity will not be

able to comply with the regulations and will need to submit a waiver application. Absent the template, each school will need to create and submit its own application for each regulation it needs to waive.

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

The waiver request form will be emailed directly to BIE-funded schools. The forms will be uploaded to the BIE document repository program NATIVE STAR.

- 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.**

This information is not available from any other source. BIE-funded schools have the ability to request waivers for the individual CFR citations listed on the waiver request form, however this form consolidates the waiver requests in to one document in order to alleviate the burden on BIE-funded schools.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not impact small businesses or other small entities.

- 6. Describe the consequence 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.**

BIE-funded day schools are actively planning for the reopening of school year 2020-2021 in the face of the COVID-19 pandemic and local health conditions. Due to the uncertainty of local, state and tribal decisions to open or close schools, BIE must be ready to modify its instruction from in-person to distance learning, ensure adequate accommodations and services to all students including students with disabilities, plan for bus transportation mileage changes, and a reduction of instructional hours. Consequences due to the uncertainty of school openings or transitions to distance learning could impact the overall administration of educational programs as well as result in serious unplanned budget shortfalls.

- 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 that 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 which 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.

The beginning of the school year for most BIE-funded schools typically happens during the months of August and September. BIE-funded schools will need to submit their waiver request forms as quickly as possible, so schools can make informed decisions regarding their school reopening plans and make short-term and long-term planning decisions that directly affect the health and welfare of Indian students.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, 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 in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

BIE will publish a 60-day notice alerting the public that the waiver request form is available to BIE-funded schools. The notice will also provide an opportunity for the public to provide comment on the collection.

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, 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 three 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.**

BIE conducted extensive consultation with tribes, parents, staff, and other pertinent stakeholders regarding the challenges affecting school closures and the requirements for BIE's upcoming school reopening directly related to the COVID-19 pandemic. Many comments were specific to instructional continuity, services for students with disabilities, health and safety issues, residential programs, and the consequences they could have on school administration and funding.

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

No payments or gifts are provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

The BIE does not provide any assurance 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. This 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.**

There are no questions of a sensitive nature in this information collection.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. 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 and aggregate the hour burdens.**

- \* **Provide estimates of annualized cost to respondents for 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.**

The BIE anticipates receiving approximately 183 waiver request forms at one hour per response, totaling 183 annual burden hours, or the amount equivalent to **\$6,905** for this information collection.

Form	Annual Number of Respondents	Frequency of Responses	Annual Number of Responses	Completion Time (hours) Per Response	Total Annual Burden Hours	\$ Value of Annual Burden Hours
Waiver Request Form	183	1	183	1 hour	183	\$6,905

To obtain the hourly rate, BIA used \$37.73, the wages and salaries figure for civilian workers from BLS Release USDL-20-1232 Employer Costs for Employee Compensation—March 2020, Table 2, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, at <https://www.bls.gov/news.release/pdf/ecec.pdf>. This wage includes a multiplier for benefits.

13. **Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)**
  - \* **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 (including filing fees paid for form processing). 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 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 purchasing or 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.**

There is no non-hour cost burden associated with this information collection.

**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.**

We estimate the annual cost for BIE to process the waiver request forms and submit them to the Assistant Secretary-Indian Affairs for review, will be \$21.16 per response, or **\$3,872.28** annually (\$21.16 \* 183 responses).

The current estimated annual cost to the government has been calculated by using the hourly rate provided by the 2020 General Schedule Annual Rates by Grade and Step: GS 11, Step 1 (**\$26.45**), and a multiplier of 1.6 for benefits for a total of **\$42.32**. The average work time is estimated at 0.5 hours per response.

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

This is a new collection.

**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.**

The BIE will not publish the results of this information collection.

**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 BIE will display the OMB control number on the waiver request form once a control number is assigned to this collection.

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

There are no exceptions.