# **SUPPORTING STATEMENT**

# **FOR PAPERWORK REDUCTION ACT SUBMISSION**

Best Interest Determination – Prison Education Program

1. Explain the circumstances **that make the collection of information necessary. What is the purpose for this information collection? Identify any legal or administrative requirements that necessitate the collection. Include a citation that authorizes the collection of information. 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, list the sections with a brief description of the information collection requirement, and/or changes to sections, if applicable.**

Following the negotiated rulemaking sessions held by the U.S. Department of Education (the Department) in 2021, a Federal Register Notice of Proposed Rulemaking was published (Vol.87, No. 144, 45432) inviting public comment on the proposed rules for the Prison Education Program (PEP). On October 28, 2022 a notice was published in the Federal Register (Vol. 87, No. 208, 65426) providing the public with the Final Rule including the requirements for PEP.

PEP is authorized under section 484(t) of the Higher Education Act of 1965, as amended (HEA) with the requirements for participation outlined in 34 CFR 668, Subpart P, effective July 1, 2023. The regulatory requirements are for a school to offer a PEP to confined or incarcerated individuals. This is a request for a new information collection to develop a form for Oversight Entities to have a mechanism to report the Best Interest Determination for every PEP under their jurisdiction as required under [34 CFR 668.241](https://www.ecfr.gov/current/title-34/section-668.241). This is an optional form which includes the required elements and is being offered for ease of reporting by the appropriate Oversight Entities. Oversight Entities include the appropriate State department of corrections or other entity responsible for overseeing correctional facilities or the Federal Bureau of Prisons.

1. **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 is used by the Department’s Program Eligibility staff in Federal Student Aid (FSA) to determine if all PEPs offered by a school meet the requirements of the Best Interest of Students outlined under [34 CFR 668.241](https://www.ecfr.gov/current/title-34/section-668.241).

1. **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. Please identify systems or websites used to electronically collect this information. Also describe any consideration given to using technology to reduce burden. If there is an increase or decrease in burden related to using technology (e.g. using an electronic form, system or website from paper), please explain in number 12.**

The form is available electronically and can be submitted to the Department as part of the supporting documentation required by the Electronic Application for Approval to Participate in the Federal Student Financial Aid Programs (E-App), OMB Control 1845-0012 or by other means to be determined by the Department. Although a separate form will be necessary for each PEP, to reduce burden, the form includes electronic options for certification. This allows the Oversight Entity to enter information directly and then the school can submit the completed form along with the other supporting documentation that is required as part of the established E-App process.

1. **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 provisions of 34 CFR 668.241 include mandatory and optional elements that must be included as part of the Best Interest Determination. There currently is no mechanism to report the Best Interest for each approved PEP to the Department and as a result there is no duplication of efforts. The Department relies on schools and Oversight Entities to conduct the Best Interest Determination. In order to collect consistent information, the form will provide the required and optional elements and provide a format for use by Oversight Entities. Although the form will be optional, it will provide a mechanism to reduce the likelihood of incomplete information and reduced burden for Oversight Entities since, if they choose to use the form, they will not have to develop their own reporting format.

1. **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.**

Only public or nonprofit institutions of higher education are eligible to apply for PEP approval. The form is designed to minimize burden by including instructions, the required elements that must be included, and required certifications and signatures. This reduces the likelihood that Oversight Entities will submit incomplete information. We do not anticipate burden to small businesses.

1. **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.**

Oversight Entities must conduct the Best Interest determination to ensure the PEPs under their jurisdiction are operating the in the Best Interest of Students. Once the Best Interest determination is conducted, the school must submit it to the Department. The information is collected only if a school has an eligible PEP but is not required otherwise. The form is designed to reduce burden for Oversight Entities and provide the required and optional elements on a standardized format for use by Oversight Entities. By receiving materially complete information using the form, the Department hopes to avoid unnecessary delays in determining if PEPs are operating in the Best Interest of Students as required by regulation. Without this collection the Department is unable to determine if a PEP is operating in the Best Interest of Students.

1. **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.**

None of the special circumstances listed apply to this data collection

1. **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.**

**Include a citation for the 60 day comment period (e.g. Vol. 84 FR ##### and the date of publication). Summarize public comments received in response to the 60 day notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. If only non-substantive comments are provided, please provide a statement to that effect and that it did not relate or warrant any changes to this information collection request. In your comments, please also indicate the number of public comments received.**

**For the 30 day notice, indicate that a notice will be published.**

**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.**

On January 15, 2025, a Federal Register Notice was published (Vol. 90, No. 9, pages 3818-3819) inviting public comment on this information collection. Four comments were received, and FSA’s responses are attached in the document entitled 1845-NEW 2025 60-day Comment Period Summary. No changes were made to the collection or the form based on these comments. The Department is now requesting a 30-day public comment period be published in the Federal Register.

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

 The Department has not authorized any payment or gifts to respondents.

1. **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.[[1]](#footnote-3) 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. If no PII will be collected, state that no assurance of confidentiality is provided to respondents. If the Paperwork Burden Statement is not included physically on a form, you may include it here. Please ensure that your response per respondent matches the estimate provided in number 12.**

The form does not collect PII and the Department makes no pledge about the confidentiality of data. There is no requirement for such an assurance in statute. The Paperwork Burden Statement is included on the form.

1. **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.**

 The form does not include questions of a sensitive nature.

1. **Provide estimates of the hour burden for this current information collection request. The statement should:**
* **Provide an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. Address changes in burden due to the use of technology (if applicable). Generally, estimates should not include burden hours for customary and usual business practices.**
* **Please do not include increases in burden and respondents numerically in this table. Explain these changes in number 15.**
* **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. 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 this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burden in the table below.**
* **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories.** [**Use this site**](https://www.bls.gov/oes/current/oes_nat.html) **to research the appropriate wage rate. 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. If there is no cost to respondents, indicate by entering 0 in the chart below and/or provide a statement.**

Oversight Entities are required to conduct the Best Interest of Students for each program under their jurisdiction. Once the Best Interest determination is conducted for each program, the Oversight Entity provides the results to the school and the school must submit the information to the Department. It is estimated that there will be a total of 500 PEPs that will be subject to the Best Interest Determination. The estimated total hour burden for the data collection effort is 5,000 hours or an average of 10 hours per Oversight Entity per program and 2 hours per institution per program. See information 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 | Estimated Respondent Average Hourly Wage | Total Annual Costs (hourly wage x total burden hours) |
| --- | --- | --- | --- | --- | --- | --- |
| Individual | N/A | N/A | N/A | N/A | N/A | N/A |
| For-Profit Institutions\* | N/A | N/A | N/A | N/A | N/A | N/A |
| PEPs at Private Institutions | 200 | 250 | 2 | 500 | $50.00 | $25,000.00 |
| PEPs at Public Institutions | 200 | 250 | 2 | 500 | $50.00 | $25,000.00 |
| Public Oversight Entities | 55 | 500 | 10 | 5,000 | $50.00 | $250,000.00 |
| Annualized Totals | 455 | 1,000 |  | 6,000 |  | $300,000.00 |

\*For-Profit institutions are not eligible to participate in PEP.

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| --- |
| ***Institutional Cost Estimates*** |
| **RESOURCE** | **HOURS/RATE** | **NUMBER** | **MONETARY COST** |
| Computer Personnel | 2 hours/$50 | 500 programs | $ 50,000 |
| Oversight Entity Personnel | 10 hours/$50 | 500 programs | $ 250,000 |
| **TOTAL** | **$300,000** |

***Please ensure the annual total burden, respondents and response match those entered in IC Data Parts 1 and 2, and the response per respondent matches the Paperwork Burden Statement that must be included on all forms.***

1. **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 : $0**

 **Total Annual Costs (O&M) : $0**

 **Total Annualized Costs Requested : $0**

There are no additional respondent costs associated with this data collection other than the hour burden estimated in item 12.

1. **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.**

The annualized cost to the Federal Government is $150,000.00. This cost estimate was derived in the following manner:

|  |
| --- |
|  ***Federal Government Cost Estimates*** |
| **RESOURCE** | **HOURS/RATE** | **NUMBER** | **MONETARY COST** |
| Eligibility Specialists, GS-13 | 5 hours/$50 | 500 Programs | $125,000.00 |
| **TOTAL** | **$125,000.00** |

1. **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).**

**Provide a descriptive narrative for the reasons of any change in addition to completing the table with the burden hour change(s) here.**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Program Change Due to New Statute** | **Program Change Due to Agency Discretion** | **Change Due to Adjustment in Agency Estimate** |
| **Total Burden** |  |  | 6,000 hours |
| **Total Responses** |  |  | 1,000 |
| **Total Costs (if applicable)** |  |  | $ 300,000 |

We anticipate 55 Oversight Entity respondents at 10 hours per 500 program responses for a total of 5,000 hours. We anticipate 400 institution respondents at 2 hours per 500 program responses for 1,000 hour. This equals a grand total of 455 respondents, 1,000 responses and 6,000 hours. The estimated total cost is $300,000 for all programs.

1. **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.**

Information collected on the form is used to determine if a PEP is operating in the Best Interest of Students. Although the specific information collected on the form will not be published, the Department will include the total number of programs meeting and not meeting the Best Interest of Students on the annual report made available to both Congress and the general public. The reports must be published annually by December 31.

1. **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 Department will display the OMB approval expiration date on the form.

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

There are no exceptions to the Certification of the Paperwork Reduction Act on the form.

1. 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) [↑](#footnote-ref-3)