DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2021–OESE–0116]

Final Requirements—American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final requirements.

SUMMARY: The Department of Education (Department) announces requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund, under the American Rescue Plan Act of 2021 (ARP Act). These requirements are intended to promote accountability and transparency by requiring each State educational agency (SEA) to post on its website maintenance of equity information for each applicable local educational agency (LEA).

DATES: These requirements are effective July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: (202) 453–5563. Email: *ESSERF@ed.gov*.

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Purpose of Program: The ARP ESSER Fund provides nearly $122 billion to SEAs and LEAs to help them safely reopen and sustain the safe operation of schools and address the impacts of the COVID–19 pandemic by addressing students' academic, social, emotional, and mental health needs. As a condition of receiving the funds, each SEA and LEA must comply with multiple requirements, including the maintenance of equity requirements in section 2004 of the ARP Act.

Program Authority: ARP Act, Public Law 117–2, March 11, 2021.

We published a notice of proposed requirement (NPR) in the **Federal Register** on January 3, 2022 (87 FR 57). The NPR contained background information and our reasons for proposing the requirement.

As discussed in the *Analysis of Comments and Changes* section elsewhere in this notice, there are a few differences between the proposed and final requirements. The final requirements change the timeline for publishing information on LEAs that are excepted from local maintenance of equity. The final requirements also clarify the requirement for an SEA to describe how it is ensuring LEAs are complying with the maintenance of equity requirements. Additional technical edits are made to the final requirements for clarity.

Public Comment: In response to our invitation in the NPR, 12 parties submitted comments on the proposed requirement.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the NPR.

Analysis of Comments and Changes: An analysis of the comments and of changes in the requirements since publication of the NPR follows.

Comment: Some commenters, including a few States, expressed concern that the proposed timeline to publish LEA-level maintenance of equity data on an SEA's website regarding which LEAs are excepted from the maintenance of equity requirements does not leave sufficient time for the SEA to prepare its data for submission. The commenters suggested that the proposed March 31, 2022, deadline be extended until June 30, 2022. One commenter suggested altering the date of publication of the maintenance of equity data to better align with the current annual reporting timeline for all ARP ESSER funds, which begins in May 2022. In response to comments and discussions with key stakeholders, we will set the deadline at 30 days from the publication of this **Federal Register** notice.

Discussion: The Department believes it is important for SEAs to publicly report information and data on those LEAs that must comply with the maintenance of equity requirements in a timely manner and that SEAs should already have the data requested in order to ensure that LEAs are complying with maintenance of equity requirements. At the same time, the Department understands the difficulties SEAs may have in accurately reporting data on a condensed timeline. As a result, the Department has adjusted the timeline to align with the ARP ESSER annual reporting period and to better fit the needs of SEAs, while also ensuring timely identification so that stakeholders in each State are aware of which LEAs must meet the maintenance of equity requirements prior to State and local allocations in FY 2023.

Changes: The Department changed the initial reporting deadline to July 8, 2022.

Comment: Several commenters expressed concern that they might be unable to gather LEA-level maintenance of equity data and post the data on their SEA website for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements in time for the proposed December 31, 2022, deadline. Commenters specifically noted that Department guidance on reporting per-pupil expenditure data on Title I, Part A report cards routinely allows SEAs and LEAs to update report cards with expenditure information as soon as it becomes available, which is usually after December of each year and may be as late as the following June.

Discussion: We appreciate the commenters' concerns and note that the LEA-level maintenance of equity data for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements during fiscal year 2022, which is the 2021–2022 school year, is due December 31, 2022. The Department recognizes that this may not align with per-pupil expenditure data published for Title I, Part A report cards. However, this reporting requirement simply allows, but does not require, LEAs to use such expenditure data for the purpose of demonstrating compliance with the maintenance of equity requirements. An LEA may also rely on allocations or budget data to determine whether it maintained equity. Further, because each SEA collects and finalizes per-pupil expenditure data on a different timeline, the Department is allowing SEAs to request a reasonable extension of the December 31, 2022, reporting deadline depending on State-specific circumstances.

Changes: None.

Comment: Several commenters expressed concern about how staffing decisions within an LEA impact its ability to maintain equity. For example, a commenter noted that hiring new staff could create a decline in spending, as newer staff are typically less expensive than leaving or retiring staff, even though staff numbers remain the same. In this case, the LEA would maintain staffing equity under section 2004(c)(1)(B) of the ARP Act, but not maintain funding equity under section 2004(c)(1)(A) of the ARP Act because the new staff salaries cost less.

Commenters also discussed whether a shift to using contracted supports would look like a decline in the number of full-time equivalent (FTE) staff while actually reflecting an increase in quality services.

Discussion: Under section 2004(c)(1) of the ARP Act, an LEA must maintain equity two ways: per-pupil funding and FTE staffing. The final requirements ensure transparency on how LEAs that are not excepted from local maintenance of equity are maintaining equity in both ways. When determining how to maintain staffing equity, an LEA must include all employees, including those hired by contract who perform school-level services. Therefore, any shift from direct employees to contracted services should not impact an LEA's ability to maintain staffing equity but may impact whether an LEA maintains fiscal equity.

Similarly, replacing experienced staff with less experienced staff will not affect an LEA's ability to maintain staffing equity. It may, however, affect the LEA's ability to maintain fiscal equity, depending on other fiscal considerations in the LEA for the applicable year. For example, consistent with the intent of the maintenance of equity requirements, in order to maintain fiscal equity where an experienced teacher receiving a higher salary is replaced with a less experienced teacher, the LEA may need to provide additional fiscal resources and supports to meet the needs of students in high-poverty schools.

Changes: None.

Comment: Several commenters asserted that proposed paragraph (d) would allow LEAs to use per-pupil expenditures to demonstrate how an LEA is maintaining staffing equity under section 2004(c)(1)(B). Commenters noted that the required FTE analysis is distinct from reporting on student-level spending. These commenters contended that offering States this flexibility would be at the cost of representative data and requested further detailed guidance should we choose to retain this flexibility.

Discussion: The benefit of publicly posting local maintenance of equity data is to facilitate public accountability so that parents and families will be able to access publicly available information on how each LEA in the State is maintaining both fiscal and staffing equity. The Department agrees with the commenters that the flexibility in proposed paragraph (d) aligns only with the maintenance of equity per-pupil funding analysis in section 2004(c)(1)(A) of the ARP Act. As a result, the final requirements clarify that this flexibility applies only to demonstrating compliance for per-pupil funding, and not maintaining staffing equity under section 2004(c)(1)(B) of the ARP Act.

Changes: The Department clarified that paragraph (d) of the final requirements applies to reporting data in paragraphs (c)(1) and (2) but not (c)(3) and (4) of the final requirements.

Comment: One commenter noted the complexity of the maintenance of equity requirements and suggested revisions to the regulatory scheme to allow for compliance to be met through either meeting the per-pupil spending requirement in section 2004(c)(1)(A) of the ARP Act or the full-time-equivalent staff requirement in section 2004(c)(1)(B) of the ARP Act.

Discussion: Each LEA must demonstrate that it has maintained equity for each high-poverty school in two ways as a condition of receiving ARP ESSER funds. Under section 2004(c) of the ARP Act, for each school identified by the LEA as a high-poverty school, the LEA may not, in FY 2022 or FY 2023, (1) reduce per-pupil funding (from combined State and local funding) by an amount that exceeds the total reduction, if any, in LEA per-pupil funding for all schools served by the LEA in such fiscal year; or (2) reduce the number of FTE staff per-pupil by an amount that exceeds the total reduction, if any, in FTE staff per-pupil in all schools served by the LEA in such fiscal year. The statute does not allow an LEA to comply with only one of the two requirements.

Changes: None.

Comment: Several commenters requested further guidance on the options available to SEAs in designing and implementing their own oversight processes to ensure LEAs comply with the maintenance of equity requirements. The commenters requested examples of allowable processes and parameters on how an LEA might remedy any violation of the maintenance of equity requirements.

Discussion: The final reporting requirements are established as a tool for States to identify and work with those LEAs that should be targeted for technical assistance to ensure their high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA. The ARP Act excepts an LEA from the local maintenance of equity requirements if the LEA:

- has a total enrollment of less than 1,000 students,
- operates a single school,
- serves all students within each grade span with a single school, or
- demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of the LEA, as determined by the Secretary of the U.S. Department of Education.

The Secretary has determined that an LEA that did not have an aggregate reduction in combined State and local per-pupil funding in FY 2022 compared to FY 2021, or in FY 2023 compared to FY 2022, has demonstrated an exceptional or uncontrollable circumstances to warrant an exception from maintaining equity for that fiscal year.

By narrowing the number of LEAs in the State that must comply with the local maintenance of equity requirements, each SEA can then review funding and FTE staffing data within the remaining LEAs and provide technical assistance on how an LEA can ensure compliance for FY 2022 and FY 2023. If an LEA does not maintain equity and cannot make adjustments in that year, then the LEA may remedy this violation by making adjustments to funding and FTE staffing in the next year to ensure that high-poverty schools in the LEA are treated equitably. The Department will continue to provide technical assistance to States on how to maintain equity.

Changes: None.

Comment: One commenter recommended that the Department create an optional reporting template for SEAs to use to report the required information in paragraph (a) on excepted LEAs.

Discussion: Each State must publish the names of LEAs that are excepted under each exception category detailed in paragraph (a). Each State must determine the most appropriate way to publish and list this information so that parents, families, and the general public in the State will be able to access and understand the information. To support States with this requirement, the Department will make available on its website an example of how a State may publicly post this information, for optional State use.

Change: None.

Comment: Several commenters expressed their support for proposed paragraph (b) to publish a general description of how the SEA is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner. The commenters suggested that such description be filed as a supplement to the approved ARP ESSER State Plan. However, some commenters requested that the Department reduce the burden of this

requirement on SEAs when establishing the final requirements.

Discussion: The benefit of publicly posting the local maintenance of equity data is to facilitate public accountability so that parents, families, and other education stakeholders will be able to access publicly available information on how LEAs are maintaining fiscal and staffing equity. By requiring SEAs to publish information and data on how LEAs are maintaining equity, the Department is providing the public access to this information. The Department has determined that the general description in proposed paragraph (b) is necessary to provide transparency on efforts the SEA is making to ensure that those LEAs that did not maintain equity take remedial efforts. As such, the Department has clarified this description in the final requirements. Further, although we appreciate the commenters' suggestion, we decline to require that States submit this information as an amendment to their ARP ESSER State Plan.

Changes: The Department clarified the description in paragraph (b).

Comment: In the preamble to the proposed requirement, the Department solicited feedback on whether an SEA should be able to publish general information on how LEAs in the State are complying with maintenance of equity rather than the specific proposed requirement. One commenter specifically recommended against allowing SEAs to alternatively publish general data for maintaining equity and cautioned that it would not allow for a meaningful evaluation of whether the maintenance of equity requirements were met by LEAs in the State. This commenter instead recommended an extended timeline to allow SEAs to gather the specific information and data in the proposed requirement.

Discussion: The Department appreciates the feedback that allowing an SEA to publish general information rather than the specific data and information proposed by the Department may result in less meaningful information to parents, families, and stakeholders. As a result, the Department declines to include this alternative approach in the final requirements and instead will require specific information and data from all States.

Change: None.

Comment: One commenter asserted that current per-pupil expenditure data are often inconsistent and not always useful to parents and advocates and requested a standardized expenditure reporting framework among LEAs. The commenter noted that available data do not always make sense alongside other data sources. Another commenter similarly requested further guidance on this potential use of data and noted that it is hard to provide oversight on per-pupil expenditure data before the end of the school year, when they can no longer be adjusted.

Discussion: The Department appreciates the concerns of the commenters and notes that the increased flexibility in the use of per-pupil expenditure data is a response to prior public feedback requesting that the Department provide this flexibility to demonstrate compliance with maintenance of equity because many LEAs do not budget or allocate spending at the school level. Given that the maintenance of equity requirements apply to two fiscal years and are not an annual reporting requirement, the Department is hesitant to require all SEAs and LEAs to change reporting structures and systems for this ARP Act requirement. As a result, the Department determined that the need for flexibility and transparency within each LEA and SEA outweighs the need for consistent data across all LEAs in the country.

In response to the challenge that one commenter identified regarding the flexibility to use per-pupil expenditure data while also ensuring that adjustments may be made to comply with the requirement, the Department acknowledges that LEAs using such per-pupil expenditure flexibility will not know whether they maintained equity until after the school year ends and, thus, will not be able to remedy a maintenance of equity violation for that school year. In deciding whether to use per-pupil expenditure data, an LEA may review prior-year per-pupil expenditure data to inform its approach to monitoring and assess the likelihood of a maintenance of equity violation. Also, as noted in response to a prior comment, if an LEA does not maintain equity and cannot make adjustments in that year, the LEA may make adjustments to funding and FTE staffing in the next year to ensure that high-poverty schools in the LEA are treated equitably.

Changes: None.

Comment: Multiple commenters requested confirmation that an SEA only needs to list excepted LEAs, and not provide detail on why they are excepted.

Discussion: Paragraph (a)(1) specifically notes that an SEA must identify each LEA in the State that is excepted from LEA-level maintenance of equity requirements under section 2004(c)(2) of the ARP Act for each of the exception reasons. As a result, the Department expects an SEA to identify each LEA that fits within each of the five categories of exceptions listed in paragraph (a). An SEA may not just list all LEAs in the State that are excepted without noting a reason why they are excepted. If more than one exception applies to an LEA (*e.g.,* the LEA operates a single school (paragraph (a)(1)(i)) and its enrollment is under 1,000 (paragraph (a)(1)(ii))), an SEA should have a consistent process for categorizing excepted LEAs into at least one of the exceptions listed in paragraph (a)(1)(i)–(v).

Changes: The Department clarified paragraph (a)(1) to indicate that an SEA must identify a reason each LEA is excepted from the maintenance of equity requirements.

Comment: Multiple commenters asked whether LEAs may continue to apply to the Department for an exception to the local maintenance of equity requirements under section 2004(c)(2)(D) of the ARP Act after the SEA's reporting deadline.

Discussion: In order for each SEA to accurately report on which LEAs are excepted from the maintenance of equity requirements for FY 2022, all LEAs that are able to demonstrate an exceptional or uncontrollable circumstance under section 2004(d)(2)(D) of the ARP Act in FY 2022 should do so prior to the updated July 8, 2022, reporting deadline. LEAs that did not have an aggregate reduction in combined State and local per-pupil funding in FY 2022 compared to FY 2021, or in FY 2023 compared to FY 2022, should submit Appendix B to the SEA. If an LEA did have an aggregate reduction in funding, but otherwise is able to demonstrate an exception or uncontrollable circumstance, then an LEA should submit an exception for FY 2022 to the Department by July 8, 2022 and notify the SEA of the request. For FY 2023, LEAs should submit exception requests by the November 1, 2022, reporting deadline. The Department makes SEAs aware of final determinations in cases when an LEA applies directly to the Department for an exception. (**Note:** The requests for exceptions referenced in this response are for LEAs that cannot sign Appendix B at *https://oese.ed.gov/files/2021/12/Maintenance-of-Equity-updated-FAQs_12.29.21_Final.pdf.* LEAs that can sign Appendix B do so and notify their SEA.)

Changes: None.

Comment: One commenter objected to the $60,000 cost assumption in the cost-benefit analysis as unrealistic.

Discussion: We appreciate the commenter's concerns and recognize the

amount of work required to meet these requirements as a whole. We further reviewed our cost- benefit analysis of the final requirement and provided additional information regarding the accuracy of the cost assumption in the *Regulatory Impact Analysis* section. The cost-benefit analysis is not intended to address the cost of compliance with the entire maintenance of equity requirements; rather, the analysis is intended to reflect the cost of the SEA publishing data that already exist. We believe that the burden outlined in the rule could be offset with ESSER administrative cost funds under section 2001(f)(4) the ARP Act.

Changes: None.

Final Requirements:

The Department establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

(a) By July 8, 2022, for FY 2022, which is the 2021–2022 school year, and by November 1, 2022, for FY 2023, which is the 2022–2023 school year, a State educational agency (SEA) must publish the following local educational agency (LEA)-level maintenance of equity data on its website:

(1) The identity of each LEA in the State that is excepted from LEA-level maintenance of equity requirements under section 2004(c)(2) of the ARP Act and indicate the reason for exception as follows:

(i) The LEA has a total enrollment of less than 1,000 students.

(ii) The LEA operates a single school.

(iii) The LEA serves all students within each grade span with a single school.

(iv) The LEA has been granted an exception by the Department due to an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act.

(v) The LEA has certified to the SEA that it did not have an aggregate reduction in combined State and local per-pupil funding, thereby justifying an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act, in the fiscal year for which the exception applies.

(2) For each LEA that is not excepted from the LEA-level maintenance of equity requirements under paragraph (a)(1), the identity of each ''high poverty'' school, as defined in section 2004(d)(4) of the ARP Act, in that LEA.

(b) By July 8, 2022 for FY 2022, which is the 2021–2022 school year and by November 1, 2022 for FY 2023, which is the 2022–2023 school year, each SEA must publish on its website a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity requirements is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner including information on when the SEA will determine LEAs are not compliant and the date that the SEA will require non-compliant LEAs to describe what adjustments the LEA will make to be in compliance prior to the start of the next school year.

(c) By December 31 following each applicable school year (*e.g.,* December 31, 2022, for FY 2022, which is the 2021–2022 school year) or such other date as the Department may approve upon request from an SEA due to the SEA's specific circumstances, an SEA must publish the following LEA-level maintenance of equity data on its website for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements under paragraph (a)(1):

(1) The per-pupil amount of funding for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(2) The per-pupil amount of funding in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(3) The per-pupil number of full-time-equivalent (FTE) staff (which may be indicated as the number of students per FTE staff) for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(4) The per-pupil number of FTE staff (which may be indicated as the number of students per FTE staff) in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(5) Whether the LEA did not maintain equity for any high-poverty school in FY 2022 or 2023, as applicable for the year for which the data are published.

(d) For the purpose of paragraph (c)(1) and (2), an SEA and its LEAs may rely on the applicable per-pupil expenditure data required to be included on the State report card pursuant to section 1111(h)(1)(C)(x) of the Elementary and Secondary Education Act of 1965.

(e) All data required to be published under paragraphs (a)-(d) must be published in a way that is machine-readable and accessible, in a location accessible for parents and families. LEA- and school-level data must be listed by the applicable National Center for Education Statistics (NCES) LEA ID and school ID, as applicable.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits

(including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that this final regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The benefit of publicly posting the local maintenance of equity data is to facilitate public accountability so that parents and families will be able to access publicly available information on how LEAs are maintaining fiscal and staffing equity. By requiring SEAs to publish information and data on how LEAs are maintaining equity, the Department is providing the public access to this information.

Potential Costs and Benefits

The Department has analyzed the costs and benefits of complying with the final requirements. Due to the varying capacity and administrative structures of affected entities, we cannot estimate, with absolute precision, the likely effects of the final requirements. However, as discussed below, we estimate that the final requirements will have a net cost of $60,000 over two years.

As an initial matter, the Department recognizes that staff at SEAs and LEAs nationwide expend considerable effort every year on education finance, both in their general supervisory capacity and as part of their efforts to comply with the maintenance of equity requirements in the ARP Act. The analysis below is not an attempt to quantify those efforts. Rather, this analysis is limited only to the incremental cost of complying with the final requirements (*e.g.,* through public reporting).

We assume that a representative (management analyst at $53.79 per hour) from each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico (hereafter collectively referred to as States) will review the final requirements. We assume that such review will take, on average, one hour per State for a one-time cost of approximately $2,800.

We assume that, for each State, a management analyst will spend approximately eight hours, on average, compiling the relevant data and preparing it for posting. Within this estimate, we assume a management analyst would employ any necessary data suppression rules, add NCES identifiers, and make any necessary formatting changes for posting of the data. We assume that posting the data online would take a network administrator ($59.09 per hour) approximately 30 minutes. In total, we assume posting data will cost approximately $23,900 per year.

Finally, we assume that approximately 20 States would need to update their data after initial posting. We assume the updates will take a management analyst approximately four hours to complete and will require 30 minutes for a network administrator to post. In total, we assume posting corrections will cost approximately $4,900 per year.

Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population below 50,000.

This final regulatory action would affect only States, none of which is a small entity for the purpose of this analysis.

Paperwork Reduction Act

The final requirements contain information collection requirements that are approved by OMB under OMB control number 1810–0759.

Intergovernmental Review: The ARP ESSER program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Mark Washington,

Deputy Assistant Secretary for Administration, Office of Elementary and Secondary Education.

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