

SUPPORTING STATEMENT

7 CFR 1901-E, Civil Rights Compliance Requirements 0575-0018

NOTE: Rural Development, Civil Rights has a proposed rule promulgating new regulations under 7 CFR 1940-D, “Rural Development Civil Rights Compliance Review.” These new regulations will include age, sex, and disability requirements, along with encompassing all civil rights laws applicable to Rural Development programs. Rural Development is currently awaiting clearance from the Department of Justice on the new regulations. Upon receiving clearances from the Department of Justice, Rural Development will proceed to publish the proposed rule. When the final rule is published, 7 CFR 1901-E will become obsolete.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing collection of information.

Rural Development (RD) is required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The information collection requirements in this request are needed to comply with civil rights laws and Executive Orders that provide protection and prohibit discrimination on the basis of race, color, sex, age disability, ethnicity, and national origin.

7 CFR Part 1901-E implements the following Civil Rights laws, Executive Orders, and regulations, to collect the necessary information and enforce the civil rights requirements of RD’s federally financial assisted programs and programs that provide housing. Title VI and Title VIII have overlapping coverage providing protection on the bases of race, color and national origin.

- a. Title VI of the Civil Rights Act of 1964 – The implementing regulations for this Act issued by the Department of Justice and the Department of Agriculture requires recipients of RD program assistance to collect information on the race/national origin/color of the beneficiaries of their specific programs. This information is used by RD for compliance reviews and monitoring purposes. This Act applies to all federally assisted programs administered by RD which includes Multifamily Housing, Community Facilities Programs, Rural Business Programs, and Rural Utilities Programs. Each of these programs has program components which provide services and benefits to eligible rural residents and communities. –

- b. Title VIII of the Civil Rights Act of 1968 – The implementing regulations issued by the Department of Housing and Urban Development (HUD) and adopted by RD, require recipients and other participants in RD housing programs to prepare affirmative fair

housing marketing plans (AFHMP), and to collect and maintain data to reflect compliance with the requirements of that plan. The AFHMP is a HUD form that is used by RD housing recipients to assure that recipients are marketing housing in a non-discriminatory manner to groups which are least likely to apply for housing. This Act applies to all housing throughout the United States, which includes private housing and Federal financial assisted housing in regards to the sale or rental of a housing unit. Title VIII provides coverage by prohibiting discrimination on the bases of race, color, religion, sex, handicap, familial status or national origin. RD programs covered by Title VIII are Single Family Housing, Multifamily Housing, and Community Facility and Rural Business grants and loans made for housing.

- c. Executive Order 11246 – The implementing regulations issued by the Department of Labor (DOL) and adopted by RD require recipients of a Federally assisted construction contract of \$10,000 or more to maintain goals for hiring minorities and females. Contracts which exceed \$10,000 are required to complete the Form RD 400-1 and related forms to ensure compliance with the Executive Order (EO). This EO has no overlapping data collection or reporting requirements.
- d. Rehabilitation Act of 1973, Section 504 – Discriminates against disability. This Act nor the terms “age” and “disability” is implemented under 7 CFR 1901-E. This, along with other collected information on Form RD-400-8, is a result of the U.S. Commission on Civil Rights’ June 1996 Report to Congress, Farmers Home Administration (FmHA) Reporting Requirements and Data Collection and Analysis.
- e. Regulations for Compliance Review: Department of Justice; Title VI Regulation 28 CFR part 42; and Executive Order 12250.
- f. To comply with OMB guidance, RD Instructions 1900-A “Race Classification and Coding Procedure” regulation outlines the procedures for identifying and reporting the race and ethnicity of individual applicant, borrowers, and families that will be served by RD programs.

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.

Multi-Family, Community Facilities, Business Programs, and Rural Utilities loans and grants programs collect and maintain data from beneficiaries. Single Family Housing applicants provide information to the Agency for its use.

How is this information used: The same information is provided by each program, but it is evaluated differently based on the specific nature of its benefits and services. This information is used by RD to comply with the Department of Justice (DOJ) Title VI Regulation 28 CFR Part 42 subpart F to insure that Federal agencies which extend Federal financial assistance properly enforce Title VI of the Civil Rights Act and similar provisions in Federal grant statutes. Additionally, Section 42.407 – “Procedures to Determine Compliance” established RD

requirements to conduct pre-award and post-award compliance reviews. The requirement to conduct compliance reviews is also based on the requirements of Executive Order 12250.

Information is also used internally by RD to monitor and analyze program participation to determine compliance with the civil rights law applicable to that recipient that is used by the agency to determine the agencies compliance. In the case of RD housing programs the information will be reported to Congress for the required annual reporting. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted, including pre-and post-awards will be reported on the Implementation Plan and submitted to the Department of Justice. This information is made available to USDA officials, officials of other Federal enforcement agencies, and to Congress for reporting purposes.

A new addition for this submission is the use of Form RD 400-4 by the Federal Crop Insurance Corporation, operating through the Risk Management Agency (RMA). RMA has competitive cooperative partnership agreement programs to carry out certain risk management education provisions of the Federal Crop Insurance Act. These programs are a) to provide agricultural producers with training opportunities in risk management, with a priority given to producers of specialty crops and underserved commodities [7 U.S.C. 1522(d)(3)(F)]; and b) to establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program [7 U.S.C. 1524(a)(2)]. Projects funded under these programs are for a maximum of one year.

Specifically, the burden to be cleared with this docket is as follows:

Reporting Requirements - Forms Approved in this Docket

Form RD 400-1, Equal Opportunity Agreement

This form is an agreement between Rural Development and a recipient of Federal financial assistance when a construction contract of \$10,000 or more is involved. The borrower agrees not to discriminate against any employee, or applicant for employment, and agrees to abide by the requirements of Executive Order 11246. The form is read and signed by the recipient. The burden is estimated to be 10 minutes.

Form RD 400-4, Assurance Agreement

This form is executed by recipients of Rural Development's Federal financial assistance as an assurance that the recipient will comply with the requirements of Title VI of the Civil Rights Act of 1964. This form is read and signed by the recipient, and the burden is estimated to be 15 minutes. Due to the seriousness of the requirements of this form, the recipient should take additional time to review its content before signing. This form is also executed by recipients of RMA's competitive cooperative partnership agreement programs to carry out certain risk management education provisions of the Federal Crop Insurance Act.

Form RD 400-6, Compliance Statement

This form is executed by a bidder or prospective contractor receiving a Federal construction contract financed by Rural Development assistance. The form is read and signed by a bidder or prospective contractor who agrees to abide by the requirements of Executive Order 11246. The burden for this form is estimated to be 10 minutes.

Form RD 400-7, Compliance Review for Recreational Loans to Associations

This form is used by trained Rural Development employees to do compliance reviews on recipients of Recreation Association loans to determine the recipient's compliance with Title VI of the Civil Rights Act of 1964. In addition to reviewing the recipient's operation, the employee is required to make community contacts, with minorities, females, disabled and community based organizations. The information required will be collected by RD compliance officials from the review of the recipients' records. The burden for the public is estimated to be 2 hours.

Form RD 400-8, Compliance Review

A finding in the U.S. Commission on Civil Rights' June 1996 Report to Congress, Farmers Home Administration (FmHA) Reporting Requirements and Data Collection and Analysis, stated: "FmHA does not make comparisons of data on participation with data on the eligible population as a factor in determining a recipients' compliance or noncompliance." As a result of that finding, RD created the current form RD-400-8 with the capability to make direct comparison of the eligible population data obtained from the census data and the participation of the beneficiaries the recipients served. The race and ethnic data will be provided by the recipients of the various loan and grant programs and is evaluated and compared to the eligible census data to determine if similar situated groups are receiving the same benefits and services of the particular program or activity. The additional information required will be collected by RD compliance officials from the review of the recipients' records. All sections of the compliance review do not pertain to all recipients; therefore they will not be completed.

The data collection alone will not determine compliance, but is used as an indicator of compliance or non compliance. To ensure compliance with 28 CFR 42.405, RD compliance officers conduct a visual review of the recipients posting of the required posters, and review advertising and community outreach to determine if the general public is made aware of the facility and its federally financed, therefore, eligible for use on an equal opportunity basis. Community contacts are made with business and community leaders and participants in the program to obtain their knowledge and opinions of the facility's operation and determine if there have been allegations of discrimination made in the community. However, when this is not available and a telephone interview is conducted the following questions are asked: Do minorities know about the facility and are they aware the facility is federally financed; have they seen any advertisements on the facility; is the facility known to operate without discriminating based on race, color, or national origin? The burden for the public is estimated to be 8 hours per response.

The compliance review forms are used to comply with the compliance review requirements of DOJ regulation 28 CFR Part 42, and Executive Order 12250. The frequency of compliance reviews are based on whether it is a loan or grant and the specific requirements of the program. Grants only obligations, only require a pre-award and a post-award compliance review. Where

grants are utilized for revolving loan funds, compliance reviews are done on recipients every three years.

Reporting Requirements - Forms Approved Under Other OMB Numbers

HUD Form 935.2A, Affirmative Fair Housing Marketing AFHM Plan - Multifamily Housing and 935.2B, Affirmative Fair Housing Marketing Plan - Single Family Housing, (OMB 2529-0013). These are HUD forms that RD uses to avoid duplication and RD accounts for its own burden hours in this package. _

The implementing regulations issued by the Department of Housing and Urban Development (HUD) and adopted by RD, require recipients and other participants in RD housing programs to prepare affirmative fair housing marketing plans (AFHMP), and to collect and maintain data to reflect compliance with the requirements of that plan. The AFHMP is a HUD form that is used by RD housing recipients to assure that recipients are marketing housing in a non-discriminatory manner to groups which are least likely to apply for housing.

The forms are prepared by Rural Housing Service's (RHS) Single Family developers requesting RHS approval for subdivisions with five(5) or more dwellings, and other participants in RHS's housing program marketing 5 or more housing units for sale or rent; and Multi-Family Housing applicants having five (5) or more rental units for rent. This form requires such persons to market their available housing to individuals determined not to be likely to apply for the available housing. The burden for this activity is estimated to be 3 hours. The total estimated respondents are 5,969, using 3 man-hours per response, for a total of 17,907 man-hours.

Form CC-257, Monthly Utilization Report

The routine preparation and submission of this form is no longer required by the Department of Labor (DOL). Contractors must implement the specific affirmative action standards in accordance with 41 CFR 60-4.3(a)7, Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246, as amended). However, the Secretary of Labor has the authority to require the use of the information contained in the form, in instances involving the violations of the DOL, as deemed appropriate to further resolve the purpose of Executive Order 11246. There are no respondents or man-hours reported for this form in this package. RD notifies its field offices of any changes through various meetings and/or written notification.

Reporting Requirements - No Forms

Discrimination Complaints – Individuals who believe they have been discriminated against by employees of Rural Development, or its recipients of Federal financial assistance, have several options to file a complaint. Individuals may file a written complaint of discrimination with the RD local office, or through the USDA website or USDA Civil Rights website. Complaints may also be filed with other Federal agencies (i.e., HUD or DOL). The burden for filing a written complaint of discrimination is estimated to be .5 hours.

Recordkeeping Requirements

Racial and Ethnic Data

Program regulations and form RD-400-4 “Assurance Agreement” establishes requirements for records and recordkeeping, types of information needed and the requirements of compliance. Recipients of Rural Development’s Federal financial assistance are required to collect and maintain information on the number of persons benefitting from their programs in compliance with RD Instruction 1900-A. This information is used by the Agency to conduct compliance reviews and other monitoring activities for determining compliance with Title VI of the Civil Rights Act of 1964. The burden for this activity is estimated to be 16 hours, which is the time it takes to establish a system for collecting this data, collecting the data, and developing an annual summary report.

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.

RD forms approved with this package are available electronically to view, and print through the RD website, USDA Service Center eForms browse option. Employees and customers with access credentials to USDA Service Center eForms may fill out, save and submit applicable forms electronically. The forms for HUD are available electronically on the HUD web site. We estimate that approximately 17% of all the information that is being requested in this docket is collected electronically.

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.

Recipients of Rural Development’s program assistance who are also recipients of assistance from another Federal agency will not be required to prepare duplicate reports to meet Rural Development’s reporting requirements. Rural Development will accept reports prepared by recipients for other Federal agencies when the information collected meets similar or the same civil rights requirements.

When necessary, Rural Development will use any information its recipients may already have available, and will modify such information as necessary to meet the specified requirements.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The information collection and reporting requirements are uniform despite the size of entity. However, recipients who are housing providers with less than five (5) units, are not required to complete affirmative fair housing marketing plans nor collect information showing compliance

with the requirements of the plan. RD does not provide for loans for Federal financial assistance under \$10,000.

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

This information is used by RD to comply with the Department of Justice (DOJ) Title VI Regulation 28 CFR Part 42 subpart F to insure that Federal agencies which extend Federal financial assistance properly enforce Title VI of the Civil Rights Act and similar provisions in Federal grant statutes. Additionally, Section 42.407 – “Procedures to Determine Compliance” established RD requirements to conduct pre-award and post-award compliance reviews. The requirement to conduct compliance reviews is also based on the requirements of Executive Order 12250. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted, including pre-and post-awards will be reported on the Implementation Plan and submitted to the Department of Justice.

The information collection requirements are considered to be the minimum necessary for determining a recipient’s compliance with the requirements of the civil rights laws covered under this regulation.

Without the required information, visual inspections and community contacts, RD and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws. In addition, the Agency and its recipients would be without appropriate data and documentation to demonstrate that services and benefits are being provided to beneficiaries on an equal opportunity basis.

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

- a. Requiring respondents to report information more than quarterly.

There are no special circumstances that would require respondents to report information more than quarterly. The State Director is responsible for requiring subsequent compliance reviews at intervals no less than 90 days, or more than 3 years, after the previous compliance review.

- b. Requiring written responses in less than 30 days.

No written responses required in less than 30 days.

- c. Requiring more than an original and two copies.

There is no requirement of requesting more than an original and two copies.

d. Requiring respondents to retain records for more than 3 years.

Respondents are not required to retain records for more than 3 years.

e. Not utilizing statistical sampling.

There is no such requirement.

f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

There is no instance where Rural Development is using statistical sampling which has not been reviewed and approved by OMB.

g. Requiring a pledge of confidentiality.

Respondents are not required to make a pledge of confidentiality.

h. Requiring submission of proprietary trade secrets.

Respondents are not required to submit proprietary trade secrets.

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 describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

As required by the Paperwork Reduction Act of 1995, a 60-Day Notice was published on December 18, 2007, Volume 72, No. 242, pages 71618-19. There were no comments.

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, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

Consultations were only made with five recipients of Rural Development's Rural Rental Housing assistance on the requirements for data collection and recordkeeping. Programs such as Community Facilities and Water and Waste have mandatory hookup requirements, clearly defined service area, and rate structure which allow consideration of service and all applicants/users.

a. Joseph Murphy, Director, United Pejepsco Housing, 36 Pejepsco Terrace, Brunswick, Maine (207) 729-8006

b. Jack McConahey, Director, Sunbelt Management Company, P.O. Box 2409, Albertville, Alabama 35905 (256) 878-2408

c. Nancy L. Epperheimer, Administrator for Foothill Income Properties Limited Partnership, paradise Gardens III, 1040 Buschmann Road, paradise, California 95969 (530) 872-5850

d. Marsha Kumm, Property Manager, Kite Business Services Inc., 7497 SM 2484, Salado, Texas 76571 (254) 947-0342

e. Kevin Flynn, Vice-President, Flynn Management Corporation, 516 Lakeview Road, Unit 8, Clearwater, Florida 33756-3302 (727) 449-1182

Recipients indicated they experienced no difficulty in collecting and maintaining this information; therefore, there were no major problems experienced in this regard.

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

No payments or gifts are given to respondents.

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

The information collected will be statistically summarized and will not convey a particular person's race/national origin. Persons providing this information are given assurance that the information is used only for monitoring and statistical purposes. RD has no policy, statute or regulation that requires giving assurance of confidentiality. Information is considered confidential and covered under the Privacy Act. Requests for information must be made under the Freedom of Information Act and will be processed in the usual procedure to protect the confidentiality of any person.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

No information of a "sensitive nature" is requested.

12. Provide estimates of the hour burden of the collection of information.

See attached spreadsheet.

The burden for collecting information under this regulation is based on an estimated 27,000 respondents, and 560,276 man-hours for completing the information collection requirements. This estimate was based on information in existing Agency reports and experience of Agency employees in handling the elements in the burden.

The estimated annualized cost to the respondents is \$9,542,472. The various types of respondents for this regulation were classified into three classes and wage classes were estimated as follows:

- Individual applicant/borrower or program assistance beneficiary - \$12 per hour
- Group type applicant/borrower - \$17 per hour
- Contractor/subcontractor - \$22 per hour

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

This regulation places no burden cost on respondents for capital, start-up, total operation, maintenance, or purchase of services.

14. Provide estimates of annualized cost to the Federal Government.

The total cost to the Federal Government is estimated to be at \$4,714,198 million. This estimate is based on the cost of collecting and analyzing the information from the respondents at the salary level of the responsible RD employee.

The grade level and hourly salary ranges from a GS-5 to a GS-13 of the RD employees who collect and analyze the information from the respondent's. The following is an approximation of how we arrived at the total cost to the Government.

The hourly rate of the employees who review discrimination complaints is a GS-12 step 1 at \$35.03 and a GS-13 step 1 at \$41.65 averaging \$38.34 x 80 hours per response multiplied by 250 responses per year equals \$766,800.

The hourly rate of the employees who conduct and complete compliance reviews GS-13 step 5 is \$47.21. Based on previous history, approximately one-half or 6,000 are reviewed per year out of 13,170 compliance reviews received annually. A review averages 8 hours to complete multiplied by \$47.21 = equals \$377.68 multiplied by 6,000 equals \$2,266,080.

The average hourly rate of GS-13 step 5 employees who review the Affirmative Fair Housing Marketing Plans is \$47.21 x 4 hours x 5,969 reviews per year = \$1,127,186. A GS-9 is \$24.15 x 2 hours x 5,969 reviews per year = \$288,303. A GS-6 is \$17.77 x 1 hours x 5,969 reviews per year = \$106,069. The summation of the cost for the GS-13, GS-9, and GS-6 is \$1,521,558.

Forms 400-1, -4, and -6 are reviewed by a GS-5 at an hourly rate of \$15.94 or GS-7 at an hourly rate of \$19.75 employee. The review, processing and filing of each form is estimated to take 20 minutes (.33). For calculation purposes the average rate of \$17.82 is used. $\$17.82 \times .33 = \5.88 x 27,170 forms equals a total of \$159,760. Figures are rounded.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

There is a decrease of 27,292 hours because some program areas reported a decrease in activity. This is an adjustment caused by decreased participation in our various programs and some of the programs have been down sized due to lack of funding. While there was an overall decrease, an additional 50 hours was added due to the inclusion of RMA on the use of Form RD 400-4.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

Data collected by housing program recipients will be used by RD to make annual statistical reports to Congress, as required by Public Law 100-242 of 1987. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted will be reported on the Implementation Plan and submitted to the Department of Justice. This information is also used internally by RD for monitoring and compliance review purposes and will be summarized as appropriate for Agency reports going to other Federal Agencies for reports to Congress.

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.

It is not cost effective for the Agencies to display the expiration date on the forms due to the large number of field offices and the significant differences in the volume of forms used by these offices.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-I.

There are no exceptions to the certification statement identified in item 19 on OMB 83-I.

19. How is this information collection related to the Service Center Initiative (SCI)? Will information collection be part of the one stop-shopping concept?

This information is not related to and will have no impact of the SCI initiative. The information collection under this regulation is case specific.