

## U.S. Department of Agriculture

OMB Number 0505-NEW

### **Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants**

The Department is requesting **Emergency Clearance** for a new information collection request to comply with FY 2012 appropriations restrictions on the expenditure of funds, associated with representations regarding felony conviction and tax delinquency status for corporate applicants. It will be used by all agencies when providing benefits to applicants to assist them in meeting their requirements. Immediate action is required to ensure that USDA agencies and offices are compliant with these requirements to avoid potential Anti-Deficiency Act, 31 U.S.C. section 1341, violations.

The FY 2012 Ag Appropriations Act restricts the use of FY 2012 funds to be used to enter into any contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee with any corporation that has a felony conviction or tax delinquency status as defined within the FY 2012 Ag Appropriations Act.

The new restrictions on corporate applicants became effective when the FY 2012 Ag Appropriations Act was signed into law. The law expires September 30, 2012. Immediate compliance is necessary to ensure the provisions of the FY 2012 Ag Appropriations Act are timely implemented. As Departmental agencies and staff offices are currently entering into 2012 contracts, loans, and loan guarantees for many of its programs, emergency clearance is critical to assist the agencies and staff offices in timely evaluating Corporate Applicant's prior to approving new 2012 contracts and loans. Failure to accurately document applicant status may result in inappropriate disbursement of FY 2012 funds. The restriction for the corporate applicants is expected to be extended on a continuing basis.

#### **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 the collection of information.**

The Department of Agriculture agencies and staff offices (except Forest Service) must comply with FY 2012 appropriations restrictions in sections 738 and 739, of the Agriculture, Rural Development Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (2012 Ag Appropriations Act) (P.L. 112-55). Forest Service must comply with the restrictions in sections 433 and 434 of the Consolidated Appropriations Act, 2012 (P.L. 112-74). All award and solicitation documents should include representations that address restrictions found in P.L. 112-55, sections 738 and 739, and P.L., 112-74, sections 433 and 434. Awarding officials should expressly include language in "Representations and Assurances for Use Solicitations and Award Documents" requiring offeror/applicants to make either self representations, assurances,

or both (based on the acquisition or program) as to whether felony convictions or unpaid tax delinquencies exist.

Sections 738 and 739 of the 2012 Ag Appropriations Act and, sections 433 and 434 of P.L., 112-74 restrict the use of FY 2012 funds to be used to enter into any contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee, with a corporation that has a felony conviction within the past 24 months, or have unpaid Federal tax delinquencies as defined within the 2012 Ag Appropriations Act.

**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.**

Currently, the Department agencies and staff offices do not have data available to assist them in determining, prior to entering into a 2012 contract, agreement, grant, loan, or loan guarantee with a Corporation that the Corporate Applicant does not have a felony conviction or tax delinquent status.

This new information collection is needed to comply with P.L. 112-55 sections 738 and 739 and P.L. 112-74 sections 433 and 434 of the FY 2012 appropriations restrictions and assist the agencies and staff offices in identifying corporations with felony convictions and unpaid Federal tax liability status prior to entering into 2012 contracts, loans, and agreements, for numerous Departmental programs.

Information will be collected using two forms:

AD-3030 – “Representation Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants” - This form will be included as part of the application package.

AD 3031- “Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants” – This form is optional for agencies and offices to be included as part of the acknowledgement and acceptance package for grants, loans and guarantees. Some agencies may chose to use this form and other may chose to use the boiler plate language below.

The following is the boiler plate clause for:

Notices of Funds Availability

Prior to entering into any new 2012 contract, agreement, loan, or loan guarantee with a corporation for any of the programs, agencies and offices will request corporate applicants to sign a representation form documenting responses to the following:

- Whether the applicant is an entity that has filed articles of corporation in one of the 50 states, District of Columbia or the various territories of the United States.
- Whether the applicant or any officer or agent of the applicant has been convicted of a felony criminal violation in the last 24 months.

- Whether the applicant has any unpaid Federal tax liability assessed for which all judicial and administrative remedies have exhausted.

The following is the boilerplate clauses for:

All Forest Service Memoranda of Understanding or Agreement Entered into with Corporations

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature, nor has any officer or agent of [insert corporation name] been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] does not have any unpaid Federal tax liabilities that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

All Memoranda of Understanding or Agreement for USDA Agencies and Offices other than the Forest Service Entered into with Corporations

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] has not been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature, nor has any officer or agent of [insert corporation name] been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature.

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] does not have any unpaid Federal tax liabilities that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- 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.**

The form may be submitted to the FSA, RD, NRCS County Offices in person, simultaneously with any new 2012 application submitted for participation in any of the applicable agency programs. The form will also be available on-line and therefore may also be submitted electronically with any electronic request from any of the agencies and offices.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in Item 2 above.**

No similar form exists for this information collection request.

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

The information collected is identical for all corporate applicants and offers no greater burden for smaller entities.

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

The restrictions of the 2012 Ag Appropriations Act took effect as soon as the fiscal year 2012 Ag Appropriations Act was signed into law. The law expires September 30, 2012. Immediate compliance is required to implement the provisions of the 2012 Ag Appropriations Act. Failure to timely implement may cause inappropriate use of FY 2012 funds and violation of the Anti-Deficiency Act.

- 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;**

Each time a corporate applicant offers to enter into a new 2012 contract, agreement, loan, or loan guarantee, the corporate applicant will be required to acknowledge the entity and any officers or agents of the entity's felony conviction and tax delinquency status. Documenting for each new 2012 contract or loan is necessary, to determine whether there was a change in status from one application to the next.

- **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 secret, other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no other special circumstances that cause this information collection to be conducted in a manner that is inconsistent with 5 CFR 1320.5.

- 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.**

**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 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 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.**

The Department is requesting emergency approval. Due to the short turn-around time, the 60-day notice to solicit public comments will be published in the Federal Register.

- 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.**

No additional assurance of confidentiality is provided with this information collection. Any and all information obtained in this collection shall not be disclosed except in accordance with 5 U.S.C.552a.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or 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.**

No requests of sexual behavior, attitudes, or religious beliefs are included in the new information collection. Certainly, acknowledging a felony conviction and tax delinquency may be of a sensitive nature; however, the information is required by the law and needed to properly evaluate new applications and comply with the provisions of the 2012 Ag Appropriation Act.

**12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

The Department estimates that approximately 2,162,535 respondents will apply for 2012 assistance for the applicable programs. This estimate is based on FY 2011 participation in the applicable programs and estimated loans for FY 2012. The estimate is based on all program participants and is not limited solely to corporate applicants.

The Department estimates that respondents would, on an average, apply for only one applicable 2012 program. As such, we estimated only 1 response per respondent.

The new information collection is estimated to take an average of 15 minutes to complete.

The annual burden for completing the application is 540,634 hours (2,162,535 responses x .25 hours).

**13. Provide estimates of the total annual cost burden to respondents or recordkeepers resulting from the collection of information (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates 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.**

There are no capital, startup, or ongoing operation/maintenance costs associated with this information collection to respondents or recordkeepers.

**14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

The cost of form development, printing and distribution is minimal because the form is computer generated. An average wage of \$22.88 was used for employees cost to review/completion of the application form multiplied by 0.5 hours per response equals \$49,478,800. (Average wage was based on frozen 2010 General Schedule, for a county employee Grade 7, Step 5 - \$18.45 and a manager at a Grade 11, Step 5 \$27.31 = \$22.88).

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

This is a new information collection requesting emergency approval.

**16. For collection of information whose results are planned to be published, outline plans tabulation and publication.**

There are no plans to publish the results of the information collected.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reason that display would be inappropriate.**

The Department is not requesting that the OMB expiration date not be displayed.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act," of OMB Form 83-I.**

USDA is able to certify compliance with all provisions under Item 19 of OMB Form 83-1.

**19. How is this information collection related to the Customer County Office? Will this information be part of their one-stop shopping?**

Applicants work with FSA, RD and NRCS County Offices administratively responsible for the farms where they apply for programs and benefits.