

U.S. Department of Agriculture
Supporting Statement
7 C.F.R. part 15 Subpart D – Data Collection Requirement
OMB Number: 0503-0022

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.

USDA is required to report on the rate of participation of its customers by race, ethnicity, gender, and disability under its civil rights responsibilities. These responsibilities apply to virtually every USDA agency and program. For purposes of the civil rights requirements, the more than 300 programs for which USDA is responsible are divided into two categories: 1) federally assisted programs and activities funded by USDA, but operated by other entities including State and local governments, universities and colleges, and private enterprises; and 2) federally conducted programs and activities funded and operated by USDA.

Shortly after the passage of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., USDA voluntarily established its own nondiscrimination regulations in order to ensure nondiscrimination in its federally conducted programs. USDA's policy, adopting Title VI's principles of nondiscrimination for programs and activities conducted by USDA, was first established in 1964 (See 29 Fed. Reg. 16966) (creating 7 C.F.R. Part 15, Subpart b, referring to nondiscrimination in direct USDA programs and activities, now found at 7 C.F.R. § 15d). The foundation and need for a data collection policy regarding nondiscrimination provisions is supported by USDA's efforts to treat customers equitably and assess progress in how all customers are served, regardless of race, ethnicity, gender, or disability.

The first USDA policy for collecting and reporting race, ethnicity, and gender data was established through a 1969 Secretary's Memorandum and was subsequently expanded in the Secretary's Memorandum No. 1662, on September 23, 1969. In September 1993, the provisions of the 1969 Secretary's Memorandum were updated and expanded by Departmental Regulation 4300-4, Civil Rights Impact Analysis (CRIA). This internal regulation requires all USDA agencies to collect program participant and employment data by race, sex, national origin, disability, and age. The CRIA is a tool for agencies and USDA to assess the impact on all protected group members as a result of proposed regulatory and budgetary issuances, as well as, proposed reorganizations and advisory committee actions. The CRIA analysis involves an assessment of the data on program participants. USDA's Civil Rights Policy requires each agency to analyze the civil rights impact(s) of policies, actions, or decisions that will affect federally conducted and assisted programs and activities and the USDA workforce. In order to assess the civil rights impact, data on programs and employment must be analyzed in a consistent manner with respect to the race, ethnicity, and gender, of customers, applicants and participants.

USDA's voluntary efforts to ensure nondiscrimination in its conducted programs and activities have been further supported by Executive Order 13160, issued on June 23, 2000, and applying additional nondiscrimination requirements on all federally conducted education and training programs and activities throughout the Government. This executive order was issued to ensure that the Federal Government holds itself "to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance." See Executive Order No. 13,160, § 1-101, reprinted in 42 U.S.C. § 2000d. Through this executive order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent is prohibited in federally conducted education and training programs and activities.

Although USDA first established a policy for collecting data on race, ethnicity, and gender in 1969, there is currently no uniform requirement for reporting and tabulating this data across USDA's diverse program areas. The four USDA agencies which administer the majority of USDA's conducted programs – the Farm Services Agency (FSA), the Natural Resources Conservation Service (NRCS), Rural Development (RD), and the Forest Service (FS) - already collect this data from individuals. FSA, NRCS, and RD (the "field based agencies") collect this data, using a standard form approved by the Office of Management and Budget (OMB) 0503-0019, under the requirements of section 14006 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which requires collection of this data for each program that serves agricultural producers and landowners. This data allows USDA to track application and participation rates for socially disadvantaged and limited resources applicants and participants. In addition, the FS already collects the data covered in this rule through a statistical survey. Together, these four agencies capture more than 75 percent of the contacts USDA has with the public through its conducted programs. This proposed regulation will standardize the record-keeping requirement across the Department to all programs conducted by USDA which deliver benefits to the public. Assisted programs are not the subject of this rule.

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.

The Office of the Assistant Secretary for Civil Rights (OASCR) is charged with ensuring compliance with all civil rights laws, coordinating the Department's administration of its civil rights responsibilities, and ensuring that civil rights elements are properly incorporated in Departmental activities and programs. (See 7 U.S.C. § 6918(d); 7 C.F.R. § 2.25.) OASCR's compliance responsibilities include a requirement for each agency to collect, maintain and annually compile data on the race, ethnicity, and gender (REG) of all program applicants and participants by county and State. The final rule provides for the standard, voluntary collection of REG data for all USDA conducted programs. Standard demographic program data will help USDA better determine if programs and services are reaching the needs of the general public,

beneficiaries, recipients, partners, and other stakeholders and supports USDA's planning, outreach, and compliance efforts. The uniform collection of REG data will allow USDA to administer programs from a proactive rather than a reactive position and enables the Department to assess the accomplishment of program delivery mandates and objectives. Moreover, when allegations of disparate treatment or service arise, it provides USDA the ability to determine the validity of discrimination complaints and resolve conflicts and issues in an expeditious manner. USDA anticipates the proposed rule will also decrease the number of administrative complaints of discrimination filed.

Specifically, demographic data can be used to: (1) perform analyses during the investigation of civil rights complaints to determine whether discrimination exists; (2) conduct mandated civil rights compliance reviews; (3) compare data from the Agriculture Census or decennial census on whether groups or communities are underserved by USDA's programs; (4) determine targeted areas for product development, marketing, and outreach; (5) customize communication for improved customer service; (6) measure the participation rates of traditionally underserved groups, such as racial/ethnic minorities, women, older farmers, and persons with disabilities, and make adjustments, as necessary, in product development and/or program delivery; and (7) measure performance of USDA personnel.

Currently, Section 14006 of the 2008 Farm Bill requires the Secretary of Agriculture to annually compile for each county and State in the United States program application and participation rate data regarding socially disadvantaged farmers or ranchers for each program of USDA that serves agricultural producers or landowners. This requirement only applies to FSA, NRCS, RD, and RMA.

These four agencies will use the voluntary data collection form approved by OMB that will be attached as a cover page to the application forms for programs that provide services to agriculture producers, farmers and ranchers. The RD Agencies will continue to use its current process to collect the race, ethnicity, and gender (REG) data for applicants and participants. They will modify their check-list form to collect whether an applicant or participant is a farmer or rancher (to conform to the requirements of the 2008 Farm Bill), which will cause a minimum burden on program applicants and agencies. The agencies enter the information from the forms into their electronic data systems. In addition, the FS already collects the data covered in this rule through a statistical survey.

USDA has no uniform method of reporting and tabulating REG data. Therefore, all remaining USDA agencies with conducted programs (Animal and Plant Health Inspection Service, and Foreign Agricultural Service) will develop a strategy for collecting voluntary REG data from individuals for their respective federally conducted programs. These strategies will be reviewed and approved by OASCR, who will also provide oversight and monitoring of the collection of this data through its compliance activities.

USDA's new collection and reporting procedures will be established per OMB's requirements for data collection on race and ethnicity. The 1977 OMB Directive 15 set forth requirements on

the collection of race and ethnicity data for all federal programs and activities and the Directive was changed to allow persons to self-identify on a multi-racial basis and through new racial and ethnic categories. The new guidelines were required to be implemented by all agencies no later than January 1, 2003. See 62 Fed. Reg. 58782 (October 30, 1997). OMB has published further guidance on how to collect and tabulate data based on these new categories and multi-racial reporting possibilities.

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.

Currently, NRCS and FSA collect REG data in the Service Center Information Management System (SCIMS) to run reports regarding program participation. SCIMS is a customer data warehouse that collects names, addresses, and identification numbers through the use of the OMB No. 0503-0019 approved data collection form. The data in SCIMS is linked to electronic NRCS and FSA program data systems. The aggregated data is compiled at the end of the year to reflect the numbers of applicants and participants by program in every county by REG.

The voluntary REG application form is also available through USDA's e-Forms website at <http://www.sc.gov.usda.gov/>, and through the agencies' websites. Paper versions of the program applications are available at the USDA Service Centers. The data collection forms are attached as the cover page of the application forms.

FS collects REG data through a statistical survey.

Each USDA agency will currently utilize its own data system to input the data. Agencies will not be required to purchase a new data system.

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.

Section 14006 of the 2008 Farm Bill requires the Secretary to annually compile for each county and State in the United States program application and participation rate data regarding socially disadvantaged farmers or ranchers for each program of USDA that serves agricultural producers or landowners. Four USDA agencies are already collecting this data. The final rule expands the collection of this data to all USDA's federally conducted programs. Federally conducted programs include program services, benefits or resources delivered directly to the public by USDA and encompass or targets more than socially disadvantaged farmers or ranchers. The final rule would also require the voluntary collection of REG data from individuals and would therefore not be a duplication of efforts.

USDA has established the Minority Farm Register (Register) (OMB No. 0560-0231; Expiration 10/31/2016) to assist its outreach efforts. Farmers provide REG data for the Register, but not all applicants or participants in USDA programs are eligible for, or participate, therefore, the data collected would not be sufficient for compliance with the proposed rule or Section 14006 of the 2008 Farm Bill.

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

The reporting requirements for this collection are intended to be as minimal as possible and are not anticipated to have any adverse effect on small businesses. The REG information will be collected from individual applicants.

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

USDA is required to report on the rate of participation of its customers by the REG under its long standing civil rights responsibilities. These responsibilities apply to virtually every USDA agency and program.

USDA's civil rights policy requires each agency to analyze the civil rights impact of decisions, actions, and policies that will affect the USDA workforce, federally conducted and assisted programs, and activities. In order to assess the civil rights impact, data on programs, activities, and employment must be analyzed in a consistent manner with respect to the REG of customers, applicants, and participants.

If the REG data is not collected on applicants and participants in USDA federally conducted programs, USDA will not be able to collect and report demographic data on its applicants and program participants. In addition, USDA would not be able to determine if programs and services are reaching and meeting the needs of the general public, beneficiaries, partners, and other stakeholders based on demographic data. Moreover, when allegations of disparate treatment or service arise, USDA will not have the ability to determine the validity of discrimination complaints or to resolve conflicts and issues in an expeditious manner.

Failure to collect this information will also have a negative impact on USDA's outreach and compliance activities. This could result in an inability to equitably deliver programs and services to applicants and producers, and ultimately an inability to hold the agencies accountable.

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;

- This is not a requirement of this information collection*

 - requiring respondents to prepare a written response to a collection of information in fewer than 30 days after the receipt of it;

This is not a requirement of this information collection.
 - requiring respondents to submit more than an original and two copies of any document;

This is not a requirement of this information collection.
 - requiring respondents to retain records, other than health , medical, government contract, grant-in-aid, or tax records for more than three years;

This is not a requirement of this information collection.
 - 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:

This is not a requirement of this information collection.
 - requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

This is not a requirement of this information collection.
 - 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;

This is not a requirement of this information collection.

or
 - requiring respondents to submit proprietary trade secret, 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.

This is not a requirement of this information collection.

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 5CFR 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.

A Federal Register Notice requesting public comments on the proposed rule, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture, was published December 27, 2013 (78 FR 78788-249). USDA received favorable comments that supported the proposed regulation. The comments on specific issues are cited below with the response provided:

Public Disclosure of Data

Comment: We received two comments submitted on behalf of seven organizations requesting that the proposed regulation require USDA agencies to make race, ethnic and gender (REG) data collected under the proposed regulation available to the public. Commenters recommended public disclosure of the data, along with civil rights compliance reviews, to enhance the effectiveness of the regulation and to ensure agency accountability.

Response: OASCR agrees that public disclosure of the data will provide customers with additional information on the effectiveness of USDA's conducted programs as well as increase its accountability to its customers. As each Agency is required to submit to OASCR timely, complete and accurate program application and participation reports containing the REG data on an annual basis, one option that OASCR is considering, upon completion of its analysis of this data, would be to post a summary analysis on either the USDA or OASCR website. In addition, Agencies will also have the option of posting their data on their websites. In regards to the recommendation that compliance reviews be subject to public disclosure, OASCR will take this under consideration.

2. Accurate Data Reporting

Comment: We received two comments submitted on behalf of seven organizations recommending that the regulation requires USDA to take steps to ensure the accurate reporting of data, especially for those who do not receive the assistance requested.

Response: We agree that USDA should take steps to ensure the accurate reporting of data. Data on programs must be analyzed in a consistent manner with respect to the protected categories. The regulation provides for the standard, voluntary collection of REG data for all USDA conducted programs. Standard demographic program data will help USDA better determine if programs and services are reaching the needs of all conducted program applicants and participants by county and State. USDA anticipates that this expanded data collection will provide additional data regarding customers who are and are not receiving USDA benefits, improve the design of USDA programs, and ultimately reduce the number of complaints of discrimination filed against USDA. The uniform collection of REG data will allow USDA to administer programs from a proactive rather than a reactive position and enables the Department to assess the accomplishment of program delivery mandates and objectives. Moreover, when allegations of disparate treatment or service arise, accurate REG data provides USDA the ability to determine the validity of discrimination complaints and resolve conflicts and issues in an expeditious manner. USDA's use of standardized voluntary methods of data collection will ensure the accuracy of data reporting for all protected categories of program applicants and participants, which will include those who apply for, but do not receive the requested assistance.

Comment: We received one comment opposing the collection of REG data from the Business and Industry Guaranteed Loan (B&I) Program of USDA's Rural Development (RD) Mission Area on the grounds that B&I works with private lenders and has only paperwork

interaction with borrower applicants. B&I cannot identify borrower applicants by race, religion, gender, etc. and the collection of REG data would create an additional step in the loan process and therefore be unduly difficult and burdensome. Further, the commenter stated that B&I is already prohibited by law from discriminating against applicants on the grounds identified in the proposed regulation.

Response: The regulation applies only to USDA “conducted” programs and only those agencies administering USDA conducted programs that serve individuals are required to collect the data. B&I is a loan guarantee program, guaranteeing loans provided by private lenders. B&I is not an RD conducted program and therefore the proposed regulation is not applicable to B&I.

3. Collection of Ethnicity Data

Comment: We received one comment submitted on behalf of six organizations requesting that the rule require agencies to collect additional information on ethnicity and language of communication. The commenter expressed concern that the use of Form AD-2106 to collect data is limiting in that it identifies only two categories under Ethnicity: (1) Hispanic or Latino, or (2) Not Hispanic or Latino.

Response: Although USDA first established a policy for collecting data on REG in 1969, there is currently no uniform requirement for reporting and tabulating this data across USDA’s diverse program areas. The rule requires that each USDA agency collect, maintain, and annually compile data on REG of all program applicants and participants of conducted programs by county and State. This will create a standard collection of data on REG from applicants and beneficiaries of USDA conducted programs. However, USDA agencies are not required to collect data on the language preferences of customers.

Although collecting data on the languages spoken by customers is outside the scope of this regulation, USDA has established its Departmental Regulation on the prohibition of national origin discrimination against persons with Limited English Proficiency (LEP) in conducted programs. In addition, USDA is in the process of finalizing its guidance on the prohibition of national origin discrimination against persons with LEP in its federally assisted programs. USDA conducted programs will not be required to collect data on language preference but will perform an assessment of the number or proportion of LEP persons eligible to be served or encountered and the frequency of encounters.

With regard to the collection of ethnicity data, the rule requires USDA agencies with conducted programs to develop strategies for collecting REG data for their respective federally conducted programs. These strategies will be reviewed and approved by OASCR and will be established per the Office of Management and Budget’s (OMB) requirements for data collection on race and ethnicity, Standards for the Classification of Federal Data on Race and Ethnicity. While we agree that expanding the ethnicity categories beyond Hispanic or Latino would provide valuable information regarding the customers participating in and receiving benefits from programs conducted by the Department, USDA is working within the parameters

of the approved OMB form. In the future, we will be looking into revising our data collection options to capture all ethnic groups by allowing customers to self-identify ethnic categories.

4. Monitoring of Data Reporting for Compliance

Comment: We received two comments on behalf of seven organizations recommending that USDA take steps to monitor compliance with data reporting requirements by the agencies.

Response: We agree that USDA should closely monitor compliance with the regulation's data collection and reporting requirements. OASCR's compliance responsibilities include ensuring that each agency collects, maintains, and annually compiles data on the REG of all program applicants and participants by county and State. OASCR will be closely monitoring and reviewing agencies data reporting for compliance on an annual basis.

5. Data Usage

Comment: We received one comment on behalf of six organizations recommending USDA more explicitly state how the collected data will be used to proactively inform strategies to address any identified inequities.

Response: The rule requires that each USDA agency collect, maintain, and annually compile data on the race, ethnicity, and gender of all conducted program applicants and participants by county and State.

Demographic data collected under the regulation can be used to: (1) perform analyses during the investigation of civil rights complaints to determine whether discrimination exists; (2) conduct mandated civil rights compliance reviews; (3) compare data from the Agriculture Census or decennial census on whether groups or communities are underserved by USDA's programs; (4) determine targeted areas for product development, marketing, and outreach; (5) customize communication for improved customer service; (6) measure the participation rates of traditionally underserved groups, such as racial/ethnic minorities, women, older farmers, and persons with disabilities, and make adjustments, as necessary, in product development and/or program delivery; and (7) measure performance of USDA personnel. Also USDA anticipates that this expanded data collection will include data regarding customers who are and are not receiving USDA benefits, will help improve the design of USDA programs, and ultimately will reduce the number of complaints of discrimination filed against USDA.

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

There will be no payments or gifts to respondents.

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

In carrying out the regulation, the Secretary shall not disclose names or individual data of any program participant. When using the data for reports and publishing reports on the USDA website, or otherwise, the Secretary will ensure that there is full compliance with civil rights laws as well as requirements under Personally Identifiable Information. The reports to Congress and the public will contain aggregate totals and will not disclose names or individual data. Information collected under this request will be stored in USDA databases. These databases are fully compliant with applicable provisions of the Privacy Act of 1974 and OMB Circular A-130 “Responsibilities for Maintenance of Records about Individuals by Federal Agencies.”

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.

To the extent that asking questions related to race, ethnicity and gender is considered sensitive, this data collection asks questions of a sensitive nature. However, providing this information is optional for all applicants and program participants. Measures will be employed to protect the privacy of the information provided. In preparing the data collection instrument, the agency followed the OMB *Standards for the Classification of Federal Data on Race and Ethnicity*.

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

Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

Provide estimates of annualized costs to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories.

This will be a voluntary collection effort that USDA estimates will take individual applicants no more than two minutes to complete. Applicants will respond one time. USDA estimates the rule will affect no more than 1,594,617 program users. USDA anticipates a response rate of at most 100 percent, and therefore estimates a maximum 53,154 total annual burden hours. The estimated cost to the respondents is \$1,142,811. (\$21.50 x 53,154) burden hours. The average hourly wage of \$21.50 is from the Bureau of Labor Statistics, May 2014)

13. Provide estimates 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 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 is no capital (startup) or on-going operation (maintenance) costs to respondents associated with this information collection.

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 information for USDA Agencies will be entered into the database by the equivalent of a GS-7 employee. The average basic hourly rate for a GS-7, Step 5 employee is approximately \$18.64. Entering the data is expected to take approximately 10 minute intervals. Thus, the estimated maximum total cost to the Federal Government based on processing 1,594,617 responses will be \$4,943,313.

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

This is a new data collection of information.

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

There are no plans for tabulation or publications.

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

The agency is seeking approval to not display the OMB expiration date on the form associated with this information collection. This collection will be an on-going activity of USDA, unless otherwise mandated by Congress. If an expiration date were to be displayed on the questionnaire, when that expiration date passes the form will be out of date and would require retiring and destroying forms that have the past expiration date.

18. Explain each exception to the certification statement identified in Item 19 "Certification of Paperwork Reduction Act."

There are no exceptions to the certification statement.