

U.S. Department of Agriculture

**Representations Regarding Felony Conviction and
Tax Delinquent Status for Corporate Applicants and Awardees
in Non-Procurement Programs
OMB Number 0505-0025**

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 (USDA) agencies and staff offices (except Forest Service) must comply with the restrictions set forth in sections 738 and 739, of the Agriculture, Rural Development Food and Drug Administration, and Related Agencies Appropriations Act, (Pub. L. 112-55, as amended and/or subsequently enacted), which prevents agencies from doing business with corporations that (1) have been convicted, or had an officer or agent of such corporation acting on behalf of the corporation convicted, of a felony criminal violation under any Federal or State law within the preceding 24 months, and/or (2) have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; unless the agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment are not necessary to protect the interests of the Government.

Forest Service must comply with similar restrictions in sections 433 and 434 of the Consolidated Appropriations Act, 2012 (P.L. 112-74, as amended and/or subsequently enacted). The Forest Service restrictions on doing business are almost identical to the restrictions for other USDA offices and agencies; the one difference is that the Forest Service restrictions are concerned only with felony convictions under Federal law, rather than both Federal and State law.

- 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.**

This information collection deals only with USDA and Forest Service non-procurement programs and transactions. Categories of non-procurement transactions covered by this information collection are: non-procurement contracts, grants, loans, loan guarantees, cooperative agreements and some memoranda of agreement.

To comply with the appropriations restrictions, the information collection requires corporate applicants and awardees for USDA and Forest Service programs to represent accurately whether they do or do not have any qualifying convictions or tax delinquencies which would prevent USDA or the Forest Service from entering into a proposed business transaction with the

corporate applicant. For non-procurement programs and transactions these representations will be submitted on forms:

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

AD 3031 and AD-3031-FS - “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 non-procurement contracts, grants, loans, loan guarantees, cooperative agreements and some memoranda of agreement. Some agencies may chose to use this form and other may chose to use the boiler plate language below.

This information assists the agencies and staff offices in identifying corporations and awardees with felony convictions and unpaid Federal tax liability status prior to entering into non-procurement transactions for numerous Departmental programs.

The following is the boiler plate clause for:

Notices of Funds Availability

Prior to entering into any new non-procurement transaction 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 including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, or the U.S. Virgin Islands. Corporations include both for profit and non-profit entities.
- Whether the applicant has been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application.
- Whether any officer or agent of the applicant has been convicted of a felony criminal violation for actions taken on behalf of the applicant under Federal or State law in the 24 months preceding the date of application.
- Whether the applicant has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

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 in person to the FSA, RD, NRCS County Offices, simultaneously with any new applications 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 forms exist 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 and the Consolidate Appropriations Act, 2012 took effect as soon as they were signed into law. Failure to collect this information may cause inappropriate use of 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 transaction 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. Documentation for each new transaction 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.

In accordance with the PRA, a 60-day notice seeking comments was published in the Federal Register on October 12, 2012, Vol. 77, No. 198, pages 62213-62214. No comments were received.

- 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 sections 738 and 739 of the 2012 Ag Appropriation Act and sections 433 and 434 of the Consolidated Appropriations Act, 2012.

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 741,544 respondents will apply for assistance for the applicable programs in a given fiscal year. This estimate is based on FY 2011 participation in the applicable programs and estimated loans for FY 2012.

Out of the 741,544 respondents some would apply and be awarded more than once while others would apply and be awarded only once during a given year for applicable programs. As such, we used an average of 1.75 responses per applicant and award. The information collection is estimated to average 15 minutes per response.

The total annual burden is 564,024 hours (2,256,097 responses x .25 hours). See separate spreadsheet under supplementary documents for breakdown of burden hours. Numbers may not compute exactly due to rounding.

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.

In the emergency submission the number of respondents was the same as the number of responses 2,162,535 equating to each respondent applying only one time.

This submission reflects a bookkeeping correction to show a more accurate estimate of the number of respondents 741,544 versus the previous 2,162,535 for a decrease of 1,420,991 respondents.

In addition, the previous submission showed one response per respondent when in fact some respondents apply for and are awarded more than once. This correction resulted in an adjustment increase of 93,562 responses from 2,162,535 to 2,256,097. This then resulted in an adjustment increase of 23,390 in burden hours from 540,634 to 564,024.

ICR Summary of Burden:

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	2,256,097	0	0	93,562	0	2,162,535
Annual Time Burden (Hr)	564,024	0	0	23,390	0	540,634
Annual Cost Burden (\$)	0	0	0	0	0	0

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.