

# Supporting Statement for Notice implementing EO 13559

RIN Number: RIN 0991-AB96

## A. Justification

### 1. Circumstances Making the Collection of Information Necessary

This is a new information collection necessitated by Executive Order 13559 (the “Executive Order”), Fundamental Principles and Policymaking Criteria for Partnerships with Faith-based and Other Neighborhood Organizations. Executive Order 13559 amended a prior Executive order to:

- Require agencies that administer or award Federal financial assistance for social service programs to implement protections for the beneficiaries or prospective beneficiaries of those programs. These protections include: (1) providing referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services; and (2) ensuring that written notice of these and other protections is provided to beneficiaries before they enroll in, or receive services from, the program;
- Affirm that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of that interference, and must be made on the basis of merit, not on the basis of the religious affiliation, or lack of affiliation, of the recipient organization;
- Affirm that the Federal government has an obligation to monitor and enforce all standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- Clarify (1) the principle that organizations engaging in explicitly religious activity must separate these activities in time or location from programs supported with direct Federal financial assistance (the prior Executive Order stated this requirement as applying to “inherently religious” activity); (2) that participation in any explicit religious activity cannot be subsidized with direct Federal financial assistance; and (3) that participation in those activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance;
- Emphasize that religious providers are welcome to compete for government social service funding and maintain a religious identity as described in the Executive order;
- Require agencies that provide Federal financial assistance for social service programs to post on their Web sites regulations, guidance documents, and policies

that have implications for faith-based and neighborhood organizations, as well as a list of entities receiving that assistance;

- Clarify that the standards in the current and proposed agency regulations apply to sub-awards as well as to prime awards; and
- Direct agencies to adopt regulations and guidance that distinguish between “direct” and “indirect” Federal financial assistance for the purpose of implementing this Executive order.

In addition, Executive Order 13559 created the Interagency Working Group on Faith-based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies.

The Executive order also required that, following receipt of the Working Group’s report, the Office of Management and Budget (OMB), in coordination with the U.S. Department of Justice, issue guidance to agencies on the implementation of the Executive order. In August 2013, OMB issued such guidance. In this guidance, OMB instructed specified agency heads, including the U.S. Secretary of Health and Human Services, to adopt regulations and guidance that will fulfill the requirements of the Executive order and to amend regulations and guidance to ensure that they are consistent with Executive Order 13559. These proposed new regulations and amendments, which include the subject information collection requirements, are part of the Department’s efforts to comply with the Executive order.

**2. Purpose and Use of Information Collection**

The information collected under these new requirements will serve the purpose of notifying beneficiaries of their rights when receiving social services under a program of the Department from a faith-based organization, including the right, established under the Executive Order, to request a referral to an alternative provider of services, and requiring faith-based recipients, sub-recipients that provide social services to make reasonable efforts to refer beneficiaries to another provider, when requested.

**3. Use of Improved Information Technology and Burden Reduction**

Although the Department will not impose electronic information collection requirements, recipients affected by this information collection request may use automated, electronic, mechanical or other technological techniques to fulfill the requirements of this information collection. For example, recipients may provide the required notice to recipients of services by email and permit responses via email, or may maintain those responses in an electronic format. However, the Department does not have specific information concerning the extent to which grantees use or will plan to use these methods of delivery, nor will it require them to use such methods.

**4. Efforts to Identify Duplication and Use of Similar Information**

This is a new process that requires the identification of types of information that the Department does not currently have because the Department has never implemented rules specific to recipient's that self-identify as being faith-based. The Department is not aware of any instances of this data being collected currently, and this understanding is corroborated by the challenges associated with compiling the data necessary for this information collection request.

**5. Impact on Small Businesses or Other Small Entities**

This information collection will have an impact on small businesses or nonprofits that are recipients of Department grants who self-identify as faith-based. The Working Group consulted extensively with faith-based organizations in its preparation of the model regulations. We are confident that the interests of these entities were taken into consideration.

**6. Consequences of Collecting the Information Less Frequent Collection**

The information implicated in this information collection request is required for the Department to implement the requirements of the Executive Order.

**7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5**

There are no special circumstances. The new proposed information collections would require recipients to retain and provide information, but not to report that information to the Department in any specified timeframe or format. There is no requirement for records to be maintained longer than three years. No statistical surveys, pledges of confidentiality or trade secrets are involved.

**8. Comments in Response to the Federal Register Notice/Outside Consultation**

The Department will publish the Notice of Proposed Rulemaking with a 60-day comment period, pursuant to 5 CFR 1320.11.

The Working Group consulted extensively with stakeholders in its development of the model regulations which the Department now proposes to implement.

**9. Explanation of any Payment/Gift to Respondents**

No payments or gifts are provided to respondents for completing this information request.

**10. Assurance of Confidentiality Provided to Respondents**

No assurances of confidentiality are being provided.

**11. Justification for Sensitive Questions**

There are no questions of a sensitive nature included in this information collection.

## **12. Estimates of Annualized Hour and Cost Burden**

This NPRM would impose requirements on religious social service providers to give beneficiaries a standardized notice instructing beneficiaries of their protections. The Department has determined this notice constitutes a requirement of third-party or public disclosure and record-keeping requirement, and is thus subject to the Paperwork Reduction Act. See 5 CFR 1320.3(c)(2). In the sample notice provided as an appendix to this Notice of Proposed Rulemaking (NPRM), care has been taken to limit the information to simply obtaining minimal identifying information and providing check boxes for material response. The new reporting requirement in proposed section 87.3(k), and the record keeping that is necessary to comply with that requirement, would be subject to the Paperwork Reduction Act.

To quantify the disclosure and recordkeeping requirements associated with the NPRM, the Department has estimated the burden that the beneficiary response would impose on faith-based or religious recipients by reviewing data from the most recent assessment of the number of faith-based or religious organizations in 65 HHS grant programs. During the assessment, which was conducted in 2007, the Center for Faith-based and Neighborhood Partnerships reviewed the names of our nonprofit and private recipients to determine whether they use religious terms in their names. This approach was necessary as HHS does not currently collect information that directly identifies a recipient as a faith-based or religious organization. The data from this review was used to estimate the number of faith-based organizations that receive discretionary grants from the Department. According to the 2007 data, an estimated 10% of HHS awards were made to faith-based or religious organizations. While we recognize that Section § 87.3(i) of this NPRM does not impose the same methodology as the 2007 survey to identify social service providers with a religious character, our 2007 survey provides best estimates of the proportion of HHS supported social service providers to the extent practicable.

Using the most recently completed fiscal year of 2014, the Department (excluding the National Institutes of Health) awarded 13,720 discretionary grants. Using the previously justified estimate of 10%, the Department estimates that 1,372 discretionary grants will be awarded to faith-based or religious organizations. Furthermore, using our estimate of one request for referral per a year per a faith-based or religious organization, we estimate that there will be 1,372 requests for referral per year. Multiplying that number times the two hours of a social service provider's time, we estimates the Total Estimated Annual Burden Hours will be 2,744 hours per a year.

We have not estimated the burden on State and local entities or on pass-through entities because today we have no data on which to base such an estimate. As the

Department does not have a direct relationship with sub-recipients, asking States to estimate the number of its sub-recipients that are faith-based or religious organizations would impose significant burden and require approval of an information collection request of its own.

**Estimated Annualized Burden Hours**

Type of Respondent	Form Name	No. of Respondents	No. Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Faith-based organizations	Form A	1,372	2	1	2,744	\$28.08	\$77,051.52
<b>Total</b>					<b>2,744</b>	<b>\$28.08</b>	<b>\$77,051.52</b>

**13. Estimates of other Total Annual Cost Burden to Respondents or Recordkeepers/Capital Costs**

We estimate that there are no startup costs and any record keeping costs incurred by this collection would be minimal and certainly de minimis in terms of calculations of recordkeeping. As noted in section a.12, using our estimate of one request for referral per a year per a faith-based or religious organization, this would require the retention of one collection form.

**14. Annualized Cost to Federal Government**

There are no additional costs to the Federal government that would result from these proposed regulations. These new regulations will primarily result in costs to grantees and subgrantees. The standard costs that the Federal government incurs related to monitoring of grants will continue to apply, and we do not expect these new requirements to increase those costs in a measurable way.

**15. Explanation for Program Changes or Adjustments**

This is a new information collection.

**16. Plans for Tabulation and Publication and Project Time Schedule**

There currently are no plans for publication of the data compiled in this information request.

**17. Reason(s) Display of OMB Expiration Date is Inappropriate**

The Department will display the expiration date for the burdens associated with these proposed regulations.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to the certification statement for these proposed regulations.