

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

OMB Number: (1121-XXXX)

RIN 1105-AB45

## A. Justification

1. 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 Executive Order 13279 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 providing referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services, and ensuring that written notice of these and other protections is provided to beneficiaries before they enroll in or receive services from the program);
  - state that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such 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;
  - state 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 (i) 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, (ii) that participation in any explicitly religious activity cannot be subsidized with direct Federal financial assistance, and (iii) that participation in any such activities must be voluntary for the beneficiaries of the social service program supported with Federal financial assistance;

- emphasize that religious providers are welcome to compete for social service funding from the Government and maintain their religious identities;
- require agencies that provide Federal financial assistance for social service programs to post online regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations and to post online a list of entities receiving such assistance;
- clarify that the standards in these proposed regulations apply to subawards as well as prime awards; and
- direct agencies to adopt regulations and guidance that distinguish between "direct" and "indirect" Federal financial assistance.
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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 stated that, following receipt of the Working Group's report, the Office of Management and Budget OMB), in coordination with the Department of Justice, must issue guidance to agencies on the implementation of the order. In August 2013, OMB issued such guidance. In this guidance, OMB instructed specified agency heads to adopt regulations and guidance that will fulfill the requirements of Executive Order 13599 and to amend regulations and guidance to ensure that they are consistent with the Order.

2. The Agency is collecting this information, pursuant to Executive Order 13559, for the purpose of ensuring that faith-based or religious organizations, administering a program supported by direct and indirect Federal financial assistance, give written notice to beneficiaries and prospective beneficiaries of their right to be referred to an alternate provider. The respondents are faith-based or religious organizations.
3. The Department will not impose electronic information-collection requirements, grantees 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, grantees may

provide the required notice to beneficiaries in person and may maintain those responses manually. However, the Department does not have specific information concerning the extent to which grantees use or will plan to use any specific method of delivery, nor will it require them to use specific method.

4. This is a new information collection, which requires the collection and identification of types of information that the Department does not currently collect. 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. This information collection will have an impact on small businesses, specifically faith-based and religious organizations, which are recipients of Department grants. The Working Group consulted extensively with faith-based organizations in its preparation of the model regulations. Because many faith-based organizations are small businesses, we are confident that the interests of these entities were taken into consideration.
6. The information implicated in this information collection request is required for the Department to implement the requirements of the Executive Order 13559.
7. There are no special circumstances. The new proposed information collections would require grantees 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. The Department has published 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. No payments or gifts are provided to respondents for completing this information request.
10. No assurances of confidentiality are being provided.
11. There are no questions of a sensitive nature included in this information collection.
12. As stated in the Paperwork Reduction Act section of the preamble for this NPRM, the Department has not included an estimate of the burden of maintaining the records needed to demonstrate compliance with the recordkeeping requirements because the Department already uses information-collection instruments to comply with the recordkeeping requirements in existing Department programs. Those collection instruments are approved by OMB and each collection has an OMB-assigned information-collection control number. The burden that would be added by these proposed regulations is so small as to not be measurable, given all the program and administrative requirements and the existing program collection instruments. Therefore, the Department has not included any estimate of recordkeeping burden in this analysis.

In calculating the burden that the notice and referral requirements would impose on faith-based or religious organizations, the Department has made several assumptions. As indicated in the discussion below, where there is no source for data, the Department has relied on conversations with other Federal agencies that have regulations requiring notices and referrals, for data based on their experiences. For example, the Department estimates that an organization would need approximately one minute to distribute the required

notice to a beneficiary. This estimate assumes that there may be instances during which less or more time may be necessary, depending on the number of beneficiaries seeking the services or benefits from the organization. Accordingly, the Department estimates that the amount of time needed to give the notice (T) will be equal to one (1) minute.

The Department acknowledges that estimating the number of faith-based or religious organizations that provide services or benefits under Department programs is challenging. To obtain this estimate, the Department relied upon information from two of its grantmaking components: the Office on Violence Against Women (OVW) and the Office of Justice Programs (OJP). OVW estimates that there are approximately 100 grantees and subgrantees that would have to provide the notice to beneficiaries. OJP estimates that there may be fewer than 50 grantees and subgrantees subject to the notice requirement, based on three years of information related to legal name, application for funding, and use of special conditions that is maintained in its Grants Management System. Accordingly, the Department estimates that the total number of organizations that must give notice (N) will be equal to 150.

Under the proposed regulations, faith-based or religious organizations are required to make reasonable efforts to refer beneficiaries seeking a referral to an alternate provider. We are not aware of any instances in which a beneficiary of a program of the Department has objected to receiving services from a faith-based or religious organization. When beneficiaries start receiving notices of their right to request referral to an alternative service provider, more may raise objections. Our estimate of the number of referrals is based on the experience of the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), which administers beneficiary substance abuse service programs under titles VI and XIX of the Public Health Service Act, 42 U.S.C. 290aa *et seq.* and 42 U.S.C. 300x-21 *et seq.* These programs require faith-based or religious organizations that receive assistance under the Public Health Service Act to provide notice to beneficiaries of their right under statute to request an alternative service provider. 42 U.S.C. 290kk-1(f), 300x-65(e); 42 CFR 54a.8. Recipients of assistance must also report

all referrals to the appropriate Federal, State, or local government agency that administers the program. 42 CFR 54a.8(d). To date, SAMHSA has not received any reports of referral by recipients or subrecipients.

Despite that information, the Department will err on the high side and estimate that the number of requests for referrals will be one per month for each faith-based or religious organization. Accordingly, the Department estimates that the number of beneficiaries or potential beneficiaries who request referrals (Z) will be twelve (12) per year.

Because the Department has presumed that each faith-based or religious organization may receive one request per month, it must estimate the amount of time needed by an organization for a reasonable effort to identify and make a referral. Based on other Federal agencies' experiences, the Department estimates that the number of hours required for an organization to make reasonable efforts to identify and refer a beneficiary (R) will be two (2) hours.

Based on the information provided, the total estimated annual burden hours (B) can be calculated using the following equation:

$B = T \times N \times Z \times R$ , where

T = the time needed to give the notice = 1 minute = 1/60 hour;

N = the number of faith-based or religious organizations = 150;

Z = the number of annual requests for a referral = 12 per year; and

R = the number of hours needed to identify and make a referral = 2 hours.

Accordingly, the Department estimates that the Total Estimated Annual Burden Hours (B) will be  $1/60 \times 150 \times 12 \times 2$ , or 60 hours per year.

In the Regulatory Flexibility Act section of the preamble, the Department indicates that it has made every effort to ensure that the disclosure and referral requirements of the proposed rule impose minimum burden and allow maximum flexibility in implementation. The proposed rule includes a model notice with the required language, which providers must give beneficiaries to

inform them of their rights and protections. The Department estimates it will take no more than two hours for providers to familiarize themselves with the notice requirements and print and duplicate an adequate number of disclosure notices for potential beneficiaries. Relying upon the May 2013 Bureau of Labor Statistics hourly mean wage for a staff person, such as a Training and Development Specialist, of \$22.81 per hour, the Department estimates that the labor cost to prepare the notice will be approximately \$45.62 per service provider. In addition, the Department estimates an upper limit of \$100 for the annual cost of materials (paper, ink, and toner) to print multiple copies of the notices. Although these costs will be borne by faith-based or religious organizations, some of which may be small service providers, the Department does not believe that a substantial number of small entities will be affected by this provision. Further, the Department does not believe that a compliance cost of less than \$200 per provider per year is a significant percentage of a provider's total revenue. In addition, the Department notes that, after the first year, the labor cost associated with compliance will likely decrease significantly because small service providers will be familiar with the requirements.

The proposed rule requires faith-based or religious organizations that provide social services, at the beneficiary's request, to make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. Although the Department estimated a minimal number of referrals in the PRA section of the preamble that will occur in any one year, the Department does not believe that referral costs will be appreciable for small faith-based or religious organizations.

13. As described in the PRA section of the NPRM, we estimate that the notice and referral requirements in the proposed regulations would add virtually no record-keeping burden in addition to the record-keeping burden that already exists under information collection requests currently approved for program performance reports. We will monitor these burdens to determine whether, under some programs, there are appreciable

burdens such that, in the future ICRs for program performance reports, we may need to add burden hours for record-keeping associated with these proposed regulations.

14. There are virtually no 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. This is a new information collection. This results in a program increase of possibly 150 responses and 60 hours.
16. There currently are no plans for publication of the data compiled in this information request.
17. The Department will display the expiration date for the burdens associated with these proposed regulations.
18. There are no exceptions to the certification statement for these proposed regulations.