

2015 SUPPORTING STATEMENT

Equal Opportunity for Religious Organizations in USDA Programs: Implementation of EO 13559 RIN 0503-AA55

OMB # 0503-xxxx

A. 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 OMB Memorandum on implementation of EO 13559 (M-13-19, 2 August 2013) notes (at 75 Fed. Reg. 71319, Sec. 2(d)): that “beneficiary protections” must be in place to protect the rights of those who may disagree with the religious character of the organizations providing services.

All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

As such, USDA requires providers to provide a “Notice of Beneficiary Protections” to individuals obtaining services informing them of their right to be referred to an alternative, non-religious provider. The necessary paperwork collection involves the providing of the notice to all individuals, covers individuals exercising their right to request an alternative provider by writing, and covers the process of USDA or the intermediary providing referrals to alternative providers. Also, there is a limited exception to the individual notice requirement. When the service provided involves only a brief interaction between the service provider and the beneficiary, and the beneficiary is receiving what may be a one-time service from the provider (such as a meal at an emergency kitchen, or one-time assistance with rent, mortgage payments, or utility bills), the service provider may post the written notice of beneficiary protections in a prominent place, in lieu of providing individual written notice to each beneficiary.

2. **Indicate how, by whom, how frequently, 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 is to be used by the referring organization to facilitate and communicate a referral and may be sent to USDA to report a referral and/or if a referral cannot be located by the referring service provider. When appropriate, USDA may require the awarding entity to provide organizations information about alternate providers, and the organization that provides services may rely on that information to fulfill its duty under this proposed rule. In these instances, no information will need to be collected.

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.**

This collection does not involve the use of information technology for collection. This is for several reasons:

1. The paucity of the information collected and small amount of time required to read and complete the form
2. The personal nature of the information collected
3. The absence and lack of need for broader information-technology infrastructure into which this collection could be integrated.

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.**

The notification of beneficiary protections to individuals obtaining services is not already available. Additionally, information on individuals' preferences regarding the matter of objection to the religious nature of service provider is not already available, and would depend on individual beliefs and the context of each organization providing the service.

5. **If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

USDA has made every effort to ensure that the written notice and referral requirements of the proposed rule impose minimum burden and allow maximum flexibility in implementation by providing a sample notice of beneficiary rights that organizations may provide to beneficiaries and by not prescribing a specific format for making referrals through this proposed rule. USDA does not believe this collection will impose a significant economic impact on a substantial number of small entities.

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.

This information is critical to protecting beneficiary rights consistent with the Executive Order. Without the information USDA would have no way of ensuring that beneficiary rights are protected.

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;**

Due to the voluntary nature of this collection, there is no requirement for beneficiary respondents to report the information more than quarterly. Service providers are likely to see a limited number of referrals and, therefore, service providers will not need to respond more than quarterly.

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

Beneficiaries would have the option to respond to this request for information immediately if they desired, but are not required to respond. A quicker response would facilitate timely referral.

Service providers would refer objections to USDA or the awarding entity for tracking purposes or for assistance in finding an alternative service provider.

- **requiring respondents to submit more than an original and two copies of any document;**

There is no requirement for 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;**

There is no requirement for 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;**

This collection is not in connection with a statistical survey.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

There is no use of a statistical data classification.

- **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**

There is no pledge of confidentiality that is not supported by authority established in statute or regulation.

- **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.**

There are no special circumstances requiring respondents to submit proprietary trade secret, or other confidential information.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, 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.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported.

The proposed rule will describe the information gathering requirements, and also provide a 60-day comment period. During these times, interested members of the public will have the opportunity to provide USDA with their input concerning the usefulness, legitimacy, and merit of the information collection activities USDA is proposing.

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

No payment or gift will be provided.

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

No assurance of confidentiality is provided to respondents.

- 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.**

There are no questions of a sensitive nature included in these documents. The information collection allows for objection of the religious nature of an organization and the beneficiary may request a different religious organization or secular organization to receive services from, but the beneficiary is not required to provide any information about their religious beliefs.

- 12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **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 cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

USDA estimates that a faith-based organization would need 2 minutes to distribute to each beneficiary the notice required in these proposed regulations. This estimate takes into consideration the likelihood that, in one-on-one interactions between a staff member and a beneficiary, providing the notice might take longer than a minute. Conversely, providing notice to a group of beneficiaries at the same time would take significantly less than a minute for each beneficiary because a few beneficiaries would pass the notice to the remaining beneficiaries in a group.

USDA estimates that in cases where a beneficiary objects to the religious character of a faith-based organization, the time required for the faith-based organization to make a reasonable effort to identify an alternate provider and refer a beneficiary to that provider

would be about 2 hours. This estimate includes the time required to identify service providers that provide similar services, preferably under the same or similar programs, to the one under which the beneficiary is being served by the faith-based organization. This estimate includes the time required in a situation where the beneficiary asks the faith-based organization to follow up either with the beneficiary or the alternate service provider in order to determine whether the referral was successful.

The Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), implemented a similar referral requirement in its 2003 final rule, Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants, Projects for Assistance in Transition From Homelessness Formula Grants, and to Public and Private Providers Receiving Discretionary Grant Funding from SAMHSA for the Provision of Substance Abuse Services Providing for Equal Treatment of SAMHSA Program Participants (SAMHSA Program Rule), 68 FR 56430. Since SAMHSA implemented the referral requirement, the SAMHSA program office has received no reports of requests for an alternate provider. Because faith-based organizations are required to provide a written notification of the beneficiary's rights under this proposed rule, requests for referrals may be more likely. However, given SAMHSA's experience, USDA estimates that 0.10 percent of beneficiaries and potential beneficiaries would request referrals to alternate providers. USDA will monitor its programs to assess whether this estimate is accurate.

USDA is not estimating the burden of maintaining the records needed to demonstrate compliance with the requirements imposed on faith-based organizations. USDA has record-keeping requirements included in information collection instruments for USDA programs.

Those collection instruments cover burdens imposed by program and administrative requirements that exist under current, OMB-approved, information collection instruments; each of those collections has an OMB-assigned information collection control number.

The record-keeping burden that this proposed rule would add to those program-specific information collection instruments is so small that, under most programs, it would not measurably increase the burden that already exists under current program and administrative requirements. If, due to the unique nature of a particular program, the record-keeping burden associated with these proposed regulations is large enough to be measurable, that burden will be calculated under the record-keeping and reporting requirements of the affected program and identified in information collection requests that are submitted to OMB for PRA approval. Therefore, we have not included any estimate of the record-keeping burden in this PRA analysis.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN:

Faith Based Organizations Reporting and Recordkeeping Burden					
Reg. Section	Program	No. of Respondents	No. of Responses per Beneficiary	Est. Average Response Time	Est. Annual Burden Hours
24 Section 5.109(g))	NIFA – Community Foods Projects Competitive Grants Program				
	Written Notice of Rights handout	1,000	1	.03 (2 min.)	30
	Referral	1	1	2.00 hrs.	2
	FNS – The Emergency Food Assistance Program – Pantries (TEFAP)¹				
	Referral	3,042	1	2	6,084
	FNS - The Emergency Food Assistance Program – Kitchens (TEFAP)				
	Referral	368	1	2	736
	RD – Community Facilities				
	Written Notice of Rights handout	13,875	1	0.03	416
	Referral	14	1	2	28
	RD – Business Programs				
	Written Notice of Rights handout	2,319	1	0.03	70
	Referral	2	1	2	4
	RD – Housing				
	Written Notice of Rights handout	1,577	1	0.03	47
	Referral	2	1	2	4
	TOTALS		22,181		

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

¹ Analysis for Written Notice of Rights handout not provided for TEFAP, as notification will be posted in a prominent place in lieu of a handout.

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 or start-up costs to respondents.

- 14. Provide estimates of annualized cost to the Federal government. Also, 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.**

USDA does not anticipate a direct cost to the Federal government as a result of the provision requiring that recipients and subrecipients provide a written beneficiary notice. USDA program offices already require review of recipients for compliance with USDA requirements, and this would be included in the existing review. As for providing a beneficiary referral upon request, USDA estimates that 3410 of the 3429 referrals will be directed to publically available information by service providers or intermediaries. Of the remaining 18 referrals, we anticipate a program person from a local field office would handle identifying available referral locations. The cost of the program person's salary is based on an average hourly rate of \$32.73 at the GS-12 Step-5 level. We, therefore, estimate that there will be any additional cost of \$589.14 to the Federal government for the referrals required in this information collection.

- 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.

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

The results of this collection will not be published.

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

USDA is not requesting approval to avoid displaying the expiration date.

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

There are no exceptions to the certification statement identified in Item #19 on form OMB 83-I, "Certification for Paperwork Reduction Act Submissions."