

## Supporting Statement

### 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.*

This statement is being submitted to support a new collection of information for Executive Order (EO) 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations (issued on November 17, 2010 (75 FR 71319)) and corresponding US Department of Labor (DOL) Final Rule<sup>1</sup> that amends the equal treatment provisions at 29 CFR Part 2 subpart D. The DOL Civil Rights Center (CRC), located within the DOL's Office of the Assistant Secretary for Administration and Management, will be responsible for its enforcement. This rulemaking was conducted in concert with other Federal agencies.

Executive Order 13559

- Requires 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;
- Affirms 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;
- Affirms 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;
- Clarifies (1) the principle that organizations engaging in explicitly religious activities 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;
- Emphasizes that religious providers are welcome to compete for government social service funding and maintain a religious identity as described in the Executive Order;

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1 Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-04/pdf/2016-07339.pdf> (81 FR 19430).

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- Requires 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;
- Clarifies that the standards apply to sub-awards as well as to prime awards; and
- Directs 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 US 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 Secretary of Labor, 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 new regulations and amendments, which include the subject information collection requirements, are part of the Department’s efforts to comply with the Executive Order.

The collection of information is imposed by implementing regulations, 29 CFR 2.34, Beneficiary protections: written notice. Section 2.34 would impose requirements on DOL religious social service providers to give beneficiaries (or potential beneficiaries) a standard form instructing beneficiaries (or potential beneficiaries) of their rights and requiring an occasional written response that may impose a burden under the Paperwork Reduction Act (PRA). (We estimate for last year that 4,362 beneficiaries would have been affected.) The Department has determined this notice is not a collection of information subject to the OMB clearance under the PRA, because the Federal Government has provided the exact text that a provider must use. See 5 CFR 1320.3(c)(2). The beneficiary’s response, however, is subject to OMB clearance under the PRA. Care has been taken to limit the information required from the beneficiary to simply obtaining minimal identifying information and providing check boxes for material responses. DOL’s regulation at 29 CFR 2.35 would require that when a beneficiary (or prospective beneficiary) of a social service program supported by direct DOL financial assistance objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider. The referral process would entail collection (and maintenance) of information subject to PRA clearance specifically, identifying and informing the alternative provider of a beneficiary or informing the intermediary of an inability to identify an alternative provider. Section 2.35 also would allow an intermediary that receives a request for assistance in identifying an alternative provider to request assistance from DOL. These notice and referral requirements apply only to domestic social service programs that are funded with direct DOL financial assistance.

These regulations also require that each recipient collect such data and maintain such records as necessary to determine whether the recipient has complied with or is complying with the referral requirements.

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 new collection of information would impose requirements on religious social service providers to give beneficiaries (or potential beneficiaries) protections against religious infringement. Beneficiaries of these religious DOL direct service providers may wish to request an alternative provider be found. These religious service providers, in turn, would identify another service provider so services could be obtained from the alternative provider or the original religious service provider would need to report to the awarding agency that no alternative provider could be found. In cases where there is not a successful referral, the awarding agency will determine if it can find a suitable service provider, and may ask the Department for assistance. The information collection will be used by the original direct social service provider, service provider intermediary, and the Department to find appropriate service providers to meet the beneficiary's needs. Direct service providers making referrals would also need to keep records to document compliance. Beneficiaries may file a complaint with DOL's CRC to inform the Department of potential violations and denials of services or benefits.

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 Department will make the forms and templates included in this ICR available on the Internet. Using technology, forms will reduce burden overall and comply with Rehabilitation Act section 508 requirements in order to reduce burden for persons with disabilities.

Although 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 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.

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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.*

This is a new ICR relating to DOL regulations implementing EO 13559, which will collect information that is not currently available. 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. Other agencies may have similar rules; however, they would not apply to DOL-funded direct service providers.

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

Small businesses will be impacted as this regulation targets those small religious providers providing services with Federal labor program funds. The time and financial burdens to comply are intentionally minimized. 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. *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.*

The collection activities are designed to protect the religious freedoms of persons who seek services under DOL grants from faith-based service providers. The information collections would only be activated when a person seeks referral to an alternative service provider on religious grounds; consequently, information could not be collected less frequently without beneficiaries losing benefits set forth in EO 13559.

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;*
  - \* *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 secrets, 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.*

The rule does not implicate any special circumstances.

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 instructions 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.*

The Working Group consulted extensively with stakeholders in its development of the model regulations that the Department is now implementing. Concurrent with the submission of this ICR on August 6, 2015, the DOL published a NPRM soliciting public comments on all parts of the rule. 80 FR 47328. The NPRM specifically sought comments related to its information collection requirements to be sent to the Department. In addition, the NPRM provided information on how the public could submit comments on the proposed information collection requirements directly to the OMB. Comments speaking to the information collections were received from Agudath Israel of America, Catholic Charities USA, Coalition Against Religious Discrimination (CARD), and a comment from the National Association of Evangelicals and other organizations. The comments and Departmental response are as follows:

A. Referral Follow-up (CARD Comment)

*Issue Summary:* The Executive Order requires each agency to establish a process for determining whether a beneficiary contacted the alternative provider and that DOL's proposed model referral form conflated three distinct follow-up options into two: (1) follow up with the beneficiary or alternative provider and (2) no follow up. The comment recommended that DOL follow the approach of other Agencies that presented three distinct options for follow-up (1) follow up with the beneficiary; (2) follow up with the alternative provider; and (3) no follow up.

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*Response:* DOL agrees with the commenter that the proposed follow-up options should be treated as three distinct options for greater clarity.

*Change:* DOL is amending the model referral form by including three distinct options for follow-up: (1) follow-up with the beneficiary; (2) follow-up with the alternative provider; and (3) no follow-up.

*Affected regulations:* 29 CFR part 2, subpart D, appendix B  
B. Burden (Agudath Israel; Catholic Charities USA; National Association of Evangelicals et al.)

*Issue Summary:* Concern that the written notice requirement is burdensome for religious organizations. For example, commenters stated that, “[t]he ramifications of implementing Executive Order 13559 by means of the proposed new rules would be to inevitably diminish the ability of the faith-based community and other neighborhood organization[s] to carry out their intended purposes of providing services to those in need in a timely and efficient manner.”

*Response:* The Executive order requires that each beneficiary receive “written notice of the protections set forth” in the order. Executive Order 13559, § 1(b), amending Executive Order 13279, § 2(h)(ii)(5), 75 FR at 71321. The Department has implemented that requirement in a manner designed to limit the burden on recipients of direct Federal financial assistance and justified by the value to beneficiaries. The Department is providing language that may simply be reproduced as a brief notice that the recipients provide or post (depending on the particular regulatory requirements). This does not place an undue burden on recipients of direct Federal financial assistance, particularly when balanced against the notice’s benefit—informing beneficiaries of valuable protections of their religious liberty. Accordingly, the Department declines to make any changes to the regulations based on these comments.

*Change:* None.

*Affected regulations:* None.

*Issue Summary:* Concern that the beneficiary protections in the proposed regulations were inconsistent with the Federal Charitable Choice provisions (42 U.S.C. 290kk-1(f) (1); 42 U.S.C. 604a(e); 42 U.S.C. 300x-65(e)(1)) by requiring that faith-based organizations find alternative providers for beneficiaries, as opposed to placing this burden on the Government. Commenters asked that the Government provide assistance to organizations making referrals. Commenters said that the documentation requirement could be quite burdensome for providers and intermediaries, and that organizations do not have enough staff to facilitate referrals. Commenters also said that the estimate most Agencies provided for carrying out the referral requirement—no more than two hours of a provider’s time—was without basis. Other commenters noted that concerns about additional costs and other concerns related to the referral requirement were misplaced,

pointing to the history of the Substance Abuse and Mental Health Services Administration (SAMHSA) referral requirements. Commenters also said that faith-based organizations should be protected from liability for the actions of, or services provided by, alternative providers.

*Response:* The Department is aware of the burden imposing beneficiary notice and referral requirements present. The Department believes, however, that the organizations required to make the referrals will generally be in the best position to identify alternative providers in reasonable geographic proximity and to make a successful referral of objecting beneficiaries to those alternative providers. In the event that an organization is unable to identify an alternative provider after a reasonable effort, the intermediary or Federal agency, as specified by agency-specific regulations, guidance, or other reference materials, will determine whether there is a suitable alternative provider to which the beneficiary can be referred. Under this process, the organization makes the initial effort, but if it is unable to identify an alternative provider, the burden shifts to the intermediary or the Agency (as applicable). The Department will provide additional directions, as needed, to organizations on whether they are responsible for the referral and when to contact an intermediary or the Agency in policy guidance or other reference materials. The Department is taking this approach due to the numerous differences among the programs administered by the Agencies that participated in the common rule this ICR supports. Agency-specific instructions will allow each Agency to tailor those instructions to the nature of the programs it administers.

The Department has sought to minimize the burden of the referral requirement to the greatest degree possible—while still fully implementing the Executive order—by limiting the referral requirement to “reasonable efforts” and providing assistance in cases where the faith-based organization is unable, on its own, to make a referral. The Department believes that the number of requests for referrals will be minimal and that, on average, referrals will take no more than two hours. The Departmental estimate of the number of referral requests faith-based organizations are likely to receive is based on SAMHSA’s experience that its referral requirement has resulted in no requests for referrals that the Department knows of to date. The Department now clarifies that a provider need not spend more than approximately two hours of staff time in order to fulfill the “reasonable efforts” requirement. To be clear, the Department expects that much less staff time will be required to make a successful referral in most cases. Finally, the Department acknowledges that, in programs governed by the Charitable Choice provisions, the statutes take precedence over these regulations, and the Government will continue to bear the full burden of making referrals as specified in those statutes.

As for commenter concerns about the organizations’ potential liability for the alternative providers’ actions, these regulations are in no way intended to open the door to liability for faith-based organizations. Executive Order 13559 specifically notes that it “is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, Agencies, or entities, its officers, employees, or agents, or any other person.” Executive

Order 13559, § 2(d), 75 FR at 71323; see also Executive Order 13279, § 7, 67 FR at 77144.

*Change:* None.

*Affected regulations:* None.

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

The Department will not provide payments or gifts in association with this information collection.

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

No assurances of confidentiality are being made.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and 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.*

Requirements applicable to social service providers do not entail the collection of what is typically considered sensitive information. Beneficiaries are asked to state when they are looking for another service provider based on religious grounds. The information collection has been developed to avoid obtaining specific information on faith matters.

12. *Provide estimates of the hour burden of the collection of information.*

The referral process would require a collection of information subject to PRA clearance. When a beneficiary objects to receiving services from a particular religious provider and requests a referral, the service provider must make a reasonable attempt to make a referral to an alternate provider. If the service provider is unable to identify an alternative provider, the service provider is required to notify the awarding entity and that entity is to determine whether there is any other suitable alternative provider to which the beneficiary (or potential beneficiary) may be referred. A DOL social service intermediary may request assistance from the Department in identifying an alternative service provider.

In addition, beneficiaries (or potential beneficiaries) may file a complaint should they believe the protections provided under EO 13559 and the rule were not provided. The Department is not requiring a particular format for filing a complaint aside from that the complaint must be in writing.



**Burden Summary Table**

Collection	Number of Respondents	Annual Frequency of Response	Time per Response	Hourly (Mean) Wage	Annual Responses	Annual Hour Burden	Burden Hour Value
Print, Duplicate, Distribute Written Notice to Beneficiaries (Private Sector), (29 CFR 2.34)	30	1	2 minutes	\$29.22	30	1	\$29.22
Identify Alternate Provider & Refer Beneficiary (or Potential Beneficiary) (Private Sector), (29 CFR 2.35)	4	1	2 hours	\$29.22 <sup>2</sup>	4	8	\$233.76
Service Provider Documentation of Referral (Private Sector), (29 CFR 2.35)	4	1	0	\$29.22 <sup>3</sup>	4	0	\$0
Unduplicated Totals	38	1	Varies	\$29.22	38	9 hours	\$262.98

13. *Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.*

The DOL believes respondents will have appropriate record-keeping capabilities necessary to comply with minimal burden imposed by this collection of information.

2. Training and Development Specialist, hourly mean wage, BLS May 2013, <http://www.bls.gov/oes/current/oes131151.htm>.

3. Training and Development Specialist, hourly mean wage, BLS May 2013, <http://www.bls.gov/oes/current/oes131151.htm>.

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14. *Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.*

There are virtually no costs to the Federal government that would result from these regulations. Federal costs stem from assisting awarding agencies.

Federal costs for this ICR are based on a GS 12-step 4 in the Washington, DC area performing the work. See [Salary Table 2016-DCB](#). Such an employee earns \$40.84 per hour.

The Department, based on Federal costs estimates to review discrimination allegations under the Workforce Investment Act funded grants, assumes an upper bound limit of 4 reviews and each review will take 30 minutes.

4 reviews x 0.5 hours x \$40.84 = \$81.68.

15. *Explain the reasons for any program changes or adjustments reported on the burden worksheet.*

This is a new information collection that will add 34 responses, 9 burden hours, and \$0 other burden costs to the DOL Information Collection Budget.

16. *For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

The Department does not plan to publish this information.

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

The Department will display the expiration date on the instruments cleared under this ICR.

18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

The Department seeks no exceptions to the certification.

## **B. Statistical Methods**

This information collection does not employ statistical methods.