

Supporting Statement for Paperwork Reduction Act Submissions
Implementation of E.O. 13559: Equal Participation of Faith-Based and Other Neighborhood
Organizations in HUD Programs
OMB Control Number: 2535–New
(from Joint Final Rule at 81 Fed. Reg. 19355, column 1)

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.**

HUD's regulations regarding the equal participation of faith-based organizations in HUD programs and activities implement the Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations in Executive Order 13279 (67 FR 77141), as amended by Executive Order 13559 (75 FR 71319) on November 17, 2010. The information collection at issue in this Paperwork Reduction Act (PRA) submission relates to sections 2(d) and 2(h) of E.O. 13279, as amended by E.O. 13559. ([Executive Order 13559](#) and the [Joint Final Rule at 81 Fed. Reg. 19355](#) are attached as required).

This final regulation includes a new information collection section, at 24 CFR 5.109(g), which would impose requirements on faith-based organizations that carry out activities under a HUD program with direct Federal financial assistance to give beneficiaries (or prospective beneficiaries) written notice of certain protections described in this final regulation; beneficiaries can provide a written response that may impose a burden under the Paperwork Reduction Act (PRA); and faith-based organizations, or intermediary, must provide a referral if a beneficiary or prospective beneficiary objects to the religious character of the organization. This regulation also requires the retention of records to show that the referral requirements in this rulemaking have been met.

HUD's regulations at 24 C.F.R. 5.109 are based upon model regulatory text developed by the Interagency Working Group on Faith-Based and Neighborhood Partnerships, established at section 3(d) of E.O. 13279, as amended by E.O. 13559. In relevant part, these regulations require that a faith-based organization that carries out programs or activities with direct Federal financial assistance from HUD must give a written notice to beneficiaries and prospective beneficiaries of the programs or activities describing certain protections available to them, as specified in 24 CFR 5.109(g). Additionally, such organizations must also undertake reasonable efforts to identify and refer a beneficiary or prospective beneficiary to an alternative provider if the beneficiary or prospective beneficiary objects to the religious character of the faith-based organization that receives direct Federal financial assistance. The beneficiary or prospective beneficiary may, but is not required, to object in writing using a model form that HUD has prepared.

- 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 is to be used by the faith-based organization that receives direct Federal financial assistance to facilitate and communicate a referral and may be sent to HUD [or, the intermediary, if the referring organization is a subrecipient of Federal funds] if a suitable alternative provider for referral cannot be located by the referring organization.

This is a new collection, however per OMB we are referencing OMB number 2535–0122.

- 3. Describe whether, and to what extent the collections of information involves the use of automated, electronic, mechanical, or other the 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 require the use of information technology for collection. This is for several reasons:

1. The minimal nature 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 purposes 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 the individual and the context of each organization providing the service.

- 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.**

HUD does not believe this collection will impose a significant economic impact on a substantial number of small entities. HUD has made every effort to ensure that the written notice and referral requirements of the 24 CFR 5.109(g) impose minimum burden and allow maximum flexibility in implementation by providing a model written notice of beneficiary rights that organizations may provide to beneficiaries and by not prescribing a specific format for making referrals.

- 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.**

Consistent with E.O. 13559, this information is critical to ensuring that beneficiaries are aware of their rights, and, particularly in the context of a beneficiary objection because of an organization's religious character, are provided with information to enable the beneficiary make such an objection.

- 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 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 HUD for assistance in finding an alternative service provider when one could not be identified after undertaking reasonable efforts.

- 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 than 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, 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 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 three years – even if the collection of information activity is the same as in prior periods. There may be circumstances that preclude consultation in a specific situation. These circumstances should be explained.

- A. The Proposed Rule was published August 6, 2015 at [80 Fed. Reg. 47302](#). Public comments on cost and burden and HUD responses were published in a Joint Final Rule issued April 4, 2016 at [81 Fed. Reg. 19355](#), and are excerpted below.

Joint Final Rule, Section III(D)(1)(h) “Burden of Written Notice” at 81 Fed. Reg. 19365:

Summary of comments: Some commenters asserted 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 Agencies have 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. Agencies are providing language that may simply be reproduced as a brief notice that the recipients provide or post¹⁴ (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 Agencies decline to make any changes to their regulations based on these comments.¹⁵

Footnote 15: The Agencies note that the burden imposed by these final regulations is discussed in each Agency’s preamble section addressing burdens imposed under the Paperwork Reduction Act of 1995.

Change: None.

Affected regulations: None.

Joint Final Rule, Section III(D)(2)(a), “Burdens, Duties and Liability of the Referring Organization for Referrals” (at 81 Fed. Reg. 19366, full comments and responses provided for context).

Summary of comments: Commenters were concerned 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 Agencies that are imposing beneficiary notice and referral requirements are aware of the burden that these requirements present. These Agencies believe, 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 Agencies 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 Agencies are taking this approach due to the numerous differences among the programs administered by the Agencies.

Agency-specific instructions will allow each Agency to tailor those instructions to the nature of the programs it administers.

The Agencies have 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. As discussed in the Agencies’ NPRM preambles or below, the Agencies believe that the number of requests for referrals will be minimal and that, on average, referrals will take no more than two hours. The Agencies’ 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 Agencies know of to date. The Agencies now clarify 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 Agencies expect that much less staff time will be required to make a successful referral in most cases. Finally, the Agencies acknowledge that, in programs governed by the Charitable Choice provisions listed above, 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 the commenters’ concern 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.

No payment or gift will be provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for 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 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.

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. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden**

hours, and explain the reasons for the variance. Generally estimates should not include burden hours for customary and usual business practices;

- **if this request covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of form OMB 83-I; and**
- **provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Annual Burden Estimate:

HUD estimates that a faith-based organization would need two 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.

HUD 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 alternative provider and refer a beneficiary to that provider would be about two 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. The estimate also includes the time required to determine whether one of the alternative providers is acceptable to the beneficiary. Also, depending on whether the beneficiary asked the faith-based organization to follow up either with the beneficiary or the alternative service provider to determine whether the referral is successful, this estimate includes the time required to do the follow-up.

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 alternative 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, HUD estimates that 0.10 percent of beneficiaries and potential beneficiaries would request referrals to alternative providers. HUD will monitor its programs to assess whether this estimate is accurate.

Estimates of the Hour burden of the Collection of Information

Hourly cost based on GS-9, Step 1 2016 hourly rate of \$25.60

Number of Respondents	No. Of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden Hours	Hourly Cost Per Response	Annual Cost
726,053	1	726,053	0.0333	24,178	\$25.60	\$618957

*Number of respondents is based on the current number of Section 236 projects in HUD systems that are eligible to decouple.

**Hourly cost estimates are based on the owner, owner's attorney, or public agency's staff to review, execute, and/or submit the documentation to HUD. Hourly cost is based on survey from PayScale.com.

13. Provide an estimate 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 12 and 14).

- The cost estimate 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 purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s) and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities;
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10) utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Hour and Cost Burden for Recordkeepers at Service Providers for Referrals
 Cost basis: GS-9 Step 1 hourly rate of \$25.60

Number of Respondents	No. Of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden Hours	Hourly Cost Per Response	Annual Cost
726	1	726	2	1452	\$25.60	\$37,171

*There are no additional costs to respondents.

**Hourly cost estimates are based on the owner, owner’s attorney, or public agency’s staff to review, execute, and/or submit the documentation to HUD. Hourly cost is based on survey from PayScale.com.

***This matrix represents recordkeeping for the referral and is based on the estimated number of referrals that HUD expects based on the SAMHSA program described on page 7.

- 14. Provide estimates of annualized cost 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 also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

As noted in the Proposed Rule at 80 FR 47308, HUD is not estimating the burden of maintaining the records needed to demonstrate compliance with the requirements imposed on faith-based organizations. HUD has recordkeeping requirements included in information collection instruments for HUD programs. Those collection instruments cover burdens imposed by program and administrative requirements that exist under current, OMB-approved, information collection instruments and each of those collections has an OMB-assigned information collection control number. The recordkeeping 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 recordkeeping burden associated with these proposed regulations is large enough to be measurable, that burden will be calculated under the recordkeeping 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 recordkeeping burden in this PRA analysis.

- 15. Explain the reasons of any program changes or adjustments reported in Items 13 and 14 of the OMB form 83-I.**

This is a new information collection.

- 16. For collection 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 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.**

HUD 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 Submissions" of OMB Form 83-I.**

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

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.