

U.S. Department of Agriculture

**Generic Clearance for
Representations Regarding Tax Delinquent and Felony Conviction Status
for Corporate Applicants and Awardees
in Non-Procurement Programs
Renewal -- OMB Number 0505-0025**

Justification

USDA's Office of the Chief Financial Officer is requesting approval from the Office of Management and Budget to submit this package as a generic collection and receive generic clearance. The purpose of this generic clearance is to aggregate the form's usage across all USDA agencies and staff offices for a clearer picture of each agency and staff office's use of the forms and the burden used. The USDA agencies and staff offices will include and submit a generic IC to 0505-0025 as a part of the renewal process for each of its collection packages using the forms. The generic IC will be on paper and reflect the agency name, collection number and the number of respondents for each form, total burden hours and explanation at how the agency arrived at the figures.

- 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 Department of Agriculture (USDA) agencies and staff offices must comply with the restrictions set forth in sections 744 and 745, in Division D - Financial Services and General Government Appropriations Act, Title VII: General Provisions – Governmentwide, Departments, Agencies, and Corporations of the Consolidated Appropriations Act, 2019, (Pub. L. 116-6, as amended and/or subsequently enacted), hereinafter Pub. L. 116-6. The restrictions apply to transactions with corporations that (1) have any “unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability and/or (2) were “convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction. The restrictions may not apply if a Federal agency considers suspension or debarment of the corporation and determines that such action is not necessary to protect the interests of the Government.

- 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 deals only with USDA nonprocurement programs and transactions. Categories of nonprocurement transactions covered by this information collection include: nonprocurement contracts, grants, loans, loan guarantees, cooperative agreements and some memoranda of understanding/agreement.

To comply with the appropriations restrictions, the information collection requires corporate applicants and awardees for USDA programs to accurately represent whether they have or do not have qualifying tax delinquencies and/or felony convictions which would prevent USDA from entering into a proposed business transaction with the corporate applicant. For nonprocurement programs and transactions these representations will be submitted through the use of the following forms:

- AD-3030 - “Representations Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants” - This form will normally be included as part of the application package.
- AD-3031 - “Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants” – This form is optional for agencies and staff offices to be included as part of the acknowledgement and acceptance package for nonprocurement contracts, grants, loans, loan guarantees, cooperative agreements and some memoranda of agreement. Some agencies may choose to use this form and other may choose to use the boiler plate language below.

This information assists the agencies and staff offices with identifying corporations and awardees with unpaid Federal tax liability and felony convictions status prior to entering into nonprocurement transactions for numerous Departmental programs.

Prior to 2015 similar appropriation restriction provisions were not uniform across the government. In FY 2015 Congress enacted slightly different government-wide provisions for all agencies and departments. In response, USDA created a set of forms that adhered to the change for use by all of its agencies and staff offices. USDA must also comply with prior year provisions issued between FY 2012-2014 to the extent that carry over/no year funds provided by those years’ appropriations were used in awards or award adjustments.

Pursuant to Office of Management and Budget Memorandum M-18-24 (Strategies to Reduce Grant Recipient Reporting Burden, September 5, 2018) “effective January 1, 2020, the General Services Administration’s System for Award Management will become the “mandatory” central repository for common government-wide certifications and representations and the usage of the forms will no longer be required. This method is currently optional.

The following is the boiler plate clause for:

Notices of Funds Availability

Prior to entering into any new non-procurement transaction with a corporation for any of the programs, agencies and staff offices will request that corporate applicants sign a representation form documenting responses to the following:

- Whether the applicant is an entity that has filed articles of corporation in one of the 50 states, District of Columbia or the various territories of the United States including

American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, or the U.S. Virgin Islands. Corporations include both for-profit and non-profit entities;

- Whether the applicant has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability;
- Whether the applicant has been convicted of a felony criminal violation under any Federal law in the 24 months preceding the date of application.

The following are the boilerplate clauses for:

All Memoranda of Understanding or Agreements for USDA Agencies and Staff Offices Entered into with Corporations

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] has not been convicted of a felony criminal violation under any Federal law in the 24 months preceding the date of signature.

By entering into this MOU/MOA, the undersigned attests that [insert corporation name] does not have any unpaid Federal tax liabilities that have been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- 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 forms may be submitted in person to the FSA, RD, NRCS County Offices, simultaneously with any new applications submitted for participation in any of the applicable agency or staff office programs. The forms will also be available online and therefore may also be submitted electronically with any electronic request from any of the agencies and staff offices.

- 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.**

No similar forms exist for this information collection request.

- 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.**

The information collected is identical for all corporate applicants and offers no greater burden for smaller entities.

6. Describe the consequences 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 restrictions of the 2019 Consolidated Appropriations Act took effect as soon as it was signed into law. Failure to collect this information may cause inappropriate use of funds and violation of the Anti-Deficiency Act.

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;**

Each time a corporate applicant offers to enter into a new transaction, it will be required to acknowledge the entity's felony conviction and tax delinquency status. Documentation for each new transaction is necessary to determine whether there was a change in status from one application to the next.

- **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 secret, 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 other special circumstances that cause this information collection to be conducted in a manner that is inconsistent with 5 C.F.R. § 1320.

- 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.**

On December 6, 2018, in Vol. 83, No. 234, pages 62833 to 62834, USDA's Office of the Chief Financial Officer (OCFO) published the notice of information collection and request for comments in the *Federal Register*. No comments were received.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Agency consultation efforts with external stakeholders were conducted by:

Deb Jackson, Director
USDA, Rural Development, Rural Housing Service, Community Facilities Program
Evan Hughes, Grants and Agreements Policy Specialist
USDA, Forest Service/AQM

See, Appendix A for responses.

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.

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

No payments or gifts are provided to respondents.

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

No additional assurance of confidentiality is provided with this information collection. Any and all information obtained in this collection shall not be disclosed except in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a).

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.

No requests of sexual behavior, attitudes, or religious beliefs are included in the new information collection. While acknowledging a felony conviction and tax delinquency may be of a sensitive nature, the information is required by the law and needed to properly evaluate new applications and comply with the provisions of sections 744 and 745 of the Consolidated Appropriations Act, 2019, as amended and/or subsequently enacted.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

The Department estimates that approximately 352,523 respondents will apply for assistance for the applicable programs in a given fiscal year.

Out of the 352,523 respondents, some would apply and be awarded more than once while others would apply and be awarded only once during a given year for applicable programs. As such, an average of 2.75 responses was used per applicant and award. The information collection is estimated to average 15 minutes per response, per form including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual burden is 242,360 hours (969,438 responses x .25 hours).

The respondents to this collection are corporate applicants and awardees for USDA programs from multiple agencies and staff offices. The frequency of the collection will occur each time corporations apply to participate in a multitude of USDA non-procurement programs and each time awardees receive an award.

13. Provide estimates of the total annual cost burden to respondents or recordkeepers resulting from the collection of information (do not include the cost of any hour burden shown in items 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, startup, or ongoing operation/maintenance costs associated with this information collection to respondents or recordkeepers.

14. Provide estimates of annualized cost to the Federal government. 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.

Government costs are covered separately by the agencies and staff offices under their information collections using the forms. Because the forms are computer generated, the cost of their development, printing and distribution is minimal.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

The decrease in the number of respondents, responses and burden hours is due to a miscalculation in the previous renewal request.

16. For collection of information whose results are planned to be published, outline plans tabulation and publication.

There are no plans to publish the results of the information collected.

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

The Department is not requesting that the OMB expiration date not be displayed.

18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act,” of OMB Form 83-1.

USDA is able to certify compliance with all provisions under Item 19 of OMB Form 83-1. There are no exceptions for this certification to the provisions found in the Paperwork Reduction Act of 1995 at 5 C.F.R. § 1320.9 for this collection.

19. How is this information collection related to the Customer County Office? Will this information be part of their one-stop shopping?

Applicants work with FSA, RD and NRCS County Offices administratively responsible for the farms where they apply for programs and benefits.

