

Following the adoption of the Department's regulations on equal treatment of faith-based organizations, questions from the public arose regarding whether the Religious Freedom Restoration Act (RFRA) exempts recipients of Federal financial assistance from provisions of authorizing statutes and implementing regulations of programs that require all recipients of Federal financial assistance under those statutes or programs to agree not to consider religion when making employment decisions for positions connected with the Federally-financed program or activity. The Department of Labor has developed the exemption process described below to effectuate a controlling opinion and guidance of the U.S. Department of Justice concerning how RFRA applies to laws restricting recipients of Federal financial assistance from making employment decisions based on religion.<sup>18</sup>

#### b. RFRA Exemption Process

In 1993, Congress enacted RFRA in response to the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, which held that a law that is religion-neutral and generally applicable need not be justified by a compelling governmental interest, even if such law incidentally affects religious practice.<sup>19</sup> By enacting RFRA, Congress sought to ensure that the government justify substantial burdens on religious exercise. Under RFRA, "[g]overnment shall not substantially burden [an organization's] exercise of religion even if the burden results from a rule of general applicability,"<sup>20</sup> unless the Government "demonstrates that application of the burden to the [organization]—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."<sup>21</sup> RFRA thus mandates strict scrutiny of any federal law that substantially burdens the exercise of religion, even if the burden is incidental to the application of a religion-neutral rule. Congress expressly applied RFRA to all Federal law whether adopted before or after the enactment of RFRA; it therefore applies to all laws governing DOL programs.<sup>22</sup>

Under RFRA, the term "exercise of religion" does not require that a burdened religious practice be compelled by, or central to, an organization's system of religious belief to be protected.<sup>23</sup> Relatedly, RFRA does not permit the government to assess the reasonableness of a religious belief, including the adherent's assessment of the religious connection between a belief asserted and

what the government forbids, requires, or prevents.<sup>24</sup> However, where a law enforced by DOL infringes on a religious practice that an organization itself regards as unimportant or inconsequential, no substantial burden has been imposed for purposes of RFRA.<sup>25</sup>

Where a law enforced by DOL prohibits religious discrimination in employment by recipients of DOL financial assistance, such prohibition will be displaced by RFRA and thus will not apply to a recipient with respect to employing individuals of a particular religious belief to perform work connected with carrying on the recipient's activities, provided that (i) such recipient can demonstrate that its religious exercise would be substantially burdened by applying the religious non-discrimination requirement to its employment practices in the program or activity at issue, and (ii) DOL is unable to demonstrate that applying the non-discrimination provision to this recipient both would further a compelling government interest and would be the least restrictive means of furthering that interest.

Under RFRA, a law substantially burdens religious exercise if it "bans an aspect of the adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice."<sup>26</sup> And in identifying a compelling government interest, "broadly formulated interests justifying the general applicability of government mandates" are insufficient.<sup>27</sup>

Once selected as a grantee, a recipient that seeks an exemption from the application of a religious non-discrimination provision must submit a certification of its eligibility for an exemption to the Assistant Secretary or relevant Agency Head charged with issuing or administering the grant or his/her designee attesting that: (1) Receiving the grant is important to the recipient; (2) employing individuals of a particular religion is important to the religious identity, autonomy, or communal religious exercise of the recipient; and (3) conditioning receipt of the grant on compliance with the non-discrimination provision substantially burdens its religious exercise. The Assistant Secretary or relevant Agency Head will approve exemptions, in consultation with the Office of the Solicitor, on a case-by-case basis, and no later than 14 calendar days from the date the certification was submitted, for recipients that make the above attestations, unless there is good reason to question the certification. If the Assistant Secretary or relevant Agency Head takes no action by the close of the 14 calendar day period, the certification will be deemed approved.

Recipients exempted from the religious non-discrimination requirements at issue will not be exempted or excused, by virtue of that particular exemption, from complying with other requirements contained in the law

or regulation at issue. In addition, any exemption may be voided at any time by the Assistant Secretary or relevant Agency Head charged with issuing or administering the grant or his/her designee, in consultation with the Office of the Solicitor of the U.S. Department of Labor, upon a determination that the certification was untruthful or a material change in circumstances indicates that reassessment of the exemption is in order. Following such determination, the Assistant Secretary or relevant Agency Head, or his/her designee will notify the recipient of the invalidation, the reasons for the invalidation, and the name, title, telephone number and/or email address of the person to contact for further information.

Signed at Washington, DC, this 12th day of January, 2021.

**Bryan Slater,**

*Assistant Secretary for Administration and Management.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this ETA-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before February 16, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information,

Federal Information Relay Service at 1-800-877-8339.

<sup>18</sup> See Attorney General Memorandum at 5a; *Memorandum Opinion for the General Counsel, Office of Justice Programs, Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act* (June 26, 2007) available at [www.justice.gov/olc/opinions.htm](http://www.justice.gov/olc/opinions.htm).

<sup>19</sup> 494 U.S. 872, 878-79 (1990).

<sup>20</sup> 42 U.S.C. 2000bb-1(a).

<sup>21</sup> *Id.* § 2000bb-1(b).

<sup>22</sup> See *id.* § 2000bb-3.

<sup>23</sup> See 42 U.S.C. 2000bb-2(4).

<sup>24</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014).

<sup>25</sup> Attorney General Memorandum at 5a.

<sup>26</sup> *Id.* at 5a.

<sup>27</sup> *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006).

including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202-693-8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The State Quality Service Plan (SQSP) represents an approach to the unemployment insurance (UI) performance management and planning process that allows for an exchange of information between the federal and state partners to enhance the ability of the program to reflect their joint commitment to performance excellence and client-centered services. As part of UI Performs, a comprehensive performance management system for the UI program, the SQSP is the principal vehicle that the state UI programs use to plan, record and manage improvement efforts. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2020 (85 FR 23865).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL-ETA.

*Title of Collection:* Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines.

*OMB Control Number:* 1205-0132.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 53.

*Total Estimated Number of Responses:* 1,166.

*Total Estimated Annual Time Burden:* 3,975 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: December 29, 2020.

**Mara Blumenthal,**

*Senior PRA Analyst.*

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## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Information Collection Activities; Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "Current Population Survey (CPS) Disability Supplement." A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 16, 2021.

**ADDRESSES:** Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to [BLS\\_PRA\\_Public@bls.gov](mailto:BLS_PRA_Public@bls.gov).

**FOR FURTHER INFORMATION CONTACT:** Erin Good, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

The July 2021 CPS Disability Supplement will be conducted at the request of the Department of Labor's Chief Evaluation Office. The Disability Supplement will provide information on the low labor force participation rates for people with disabilities; the use of and satisfaction with programs that prepare people with disabilities for employment; the work history, barriers to employment, and workplace accommodations reported by persons with a disability; and the effect of financial assistance programs on the likelihood of working. Since the supplement was last collected in 2019, work patterns have changed, policies have changed, and assistive technologies have advanced due to the coronavirus (COVID-19) pandemic. Having updated information will be valuable in determining how employment barriers have changed for people with disabilities.

Because the Disability Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. Thus, comparisons will be possible across respondent characteristics, including sex, race, ethnicity, age, and educational attainment. It will also be possible to create estimates for those who are employed, unemployed, and not in the labor force. Because the CPS is a rich source of information on the employment status of the population, it will be possible to examine in detail the nature of various employment and unemployment situations.

## II. Current Action

Office of Management and Budget clearance is being sought for the CPS Disability Supplement. These data are necessary to provide information about the labor market challenges facing persons with a disability and will contribute to improvements in policies and programs designed to assist these individuals.

## III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.