

2021 SUPPORTING STATEMENT

7 CFR 1901-E, Civil Rights Compliance Requirements OMB No. 0575-0018

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 collection of information.

Rural Development (RD) is required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The information collection requirements in this request are needed to comply with civil rights laws and Executive Orders that provide protection and prohibit discrimination on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, reprisal or retaliation for prior civil rights activity.

7 CFR Part 1901-E implements the following Civil Rights laws, Executive Orders, and regulations, to collect the necessary information and enforce the civil rights requirements of RD's Federally assisted programs and programs that provide housing. Title VI and Title VIII have overlapping coverage providing protection on the bases of race, color and national origin.

- a. Title VI of the Civil Rights Act of 1964 – The implementing regulations for this Act issued by the Department of Justice and the Department of Agriculture requires recipients of RD program assistance to collect information on the race/national origin/color of the beneficiaries of their specific programs. This information is used by RD for compliance reviews and monitoring purposes. This Act applies to all federally assisted programs administered by RD which includes Multi-Family Housing, Community Facilities Programs, Rural Business Programs, and Rural Utilities Programs. Each of these programs has program components which provide services and benefits to eligible rural residents and communities.
- b. Title VIII of the Civil Rights Act of 1968- Title VIII of the Civil Rights Act of 1968, as amended, is also known as the Fair Housing Act of 1968 (FHA) as amended by the Fair Housing Amendments Act (FHAA) of 1988. The implementing regulations issued by the Department of Housing and Urban Development (HUD) and adopted by RD, were enacted to provide fair housing to all persons regardless of race, color, national origin, religion, sex, familial status, or disability. Agency employees, borrowers, contractors, packagers, realtors, and others who participate in providing housing for sale or rent through Agency housing programs, are required to comply with the provisions of Title VIII of the Civil Rights Act of 1968. Recipients and other participants in RD housing

programs are required to prepare Affirmative Fair Housing Marketing Plans (AFHMPs), and to collect and maintain data to reflect compliance with the requirements of that plan. The AFHMP is a HUD form that is used by RD housing recipients to assure that recipients are marketing housing in a non-discriminatory manner to groups which are least likely to apply for housing. This Act includes the sale and rental of housing and applies to all housing throughout the United States, including private housing and Federal assisted housing. RD programs covered by Title VIII are Single Family Housing, Multi-Family Housing, and Community Facility and Rural Business grants and loans made for housing.

- c. Rehabilitation Act of 1973, Section 504 – Prohibits discrimination based on disability. Specifically, no qualified person with a disability shall, on the basis of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving financial assistance from the Department. This, along with other collected information on Form RD-400-8, is a result of the U.S. Commission on Civil Rights’ June 1996 Report to Congress, Farmers Home Administration (FmHA) Reporting Requirements and Data Collection and Analysis.
- d. Age Discrimination Act of 1975- Prohibits discrimination on the basis of age in programs and activities that receive Federal financial assistance. This information is collected on applicable housing and credit applications.
- e. Americans with Disabilities Act of 1990- The ADA prohibits discrimination against persons with disabilities. It is modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin and Section 504 of the Rehabilitation Act of 1973. This, along with other collected information on Form RD-400-8, is a result of the U.S. Commission on Civil Rights’ June 1996 Report to Congress, Farmers Home Administration (FmHA) Reporting Requirements and Data Collection and Analysis.
- f. Title IX of the Education Amendments Act of 1972 – Title IX prohibits discrimination on the basis of sex.in education programs and activities that receive Federal financial assistance. This, along with other collected information on Form RD-400-8, is a result of the U.S. Commission on Civil Rights’ June 1996 Report to Congress, Farmers Home Administration (FmHA) Reporting Requirements and Data Collection and Analysis.
- g. Equal Credit Opportunity Act of 1974- Prohibits any creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to execute a contract); to the fact that all or part of the applicant’s income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. This information is collected on applicable credit applications.
- h. Executive Order 11246 – The implementing regulations issued by the Department of Labor (DOL) and adopted by RD require recipients of a Federally assisted construction contract of \$10,000 or more to maintain goals for hiring minorities and females.

Contracts which exceed \$10,000 are required to complete the Form RD 400-1 and related forms to ensure compliance with the Executive Order (EO). This EO has no overlapping data collection or reporting requirements.

- i. Executive Order 12898- Requires the Agency to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. The data collected overlaps with data already being collected in program offices.
- j. Executive Order 13166- Requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries. Recipients of Agency financial assistance are required to collect this data.
- k. To comply with OMB guidance, RD Instructions 1900-A “Race Classification and Coding Procedure” regulation outlines the procedures for identifying and reporting the race and ethnicity of individual applicants, borrowers, and families that will be served by RD programs.

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.

Multi-Family, Community Facilities, Business Programs, and Rural Utilities loan and grants programs collect and maintain data from beneficiaries. Single-Family Housing applicants provide information to the Agency for its use.

How is this information used: The same information is provided by each program, but it is evaluated differently based on the specific nature of its benefits and services. This information is used by RD to comply with the Department of Justice (DOJ) Title VI Regulation 28 CFR Part 42 subpart F to ensure that Federal agencies which extend Federal financial assistance properly enforce Title VI of the Civil Rights Act and similar provisions in Federal grant statutes. Additionally, Section 42.407 – “Procedures to Determine Compliance” established RD requirements to conduct pre-award and post-award compliance reviews. The requirement to conduct compliance reviews is also based on the requirements of Executive Order 12250.

Information is also used internally by RD to monitor and analyze program participation to determine compliance with the civil rights laws applicable to that recipient. The information is

also used by the Agency to determine Agency compliance. In the case of RD housing programs, the information will be reported to Congress for the required annual reporting. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted, including pre-and post-awards, will be reported on the Implementation Plan and submitted to the Department of Justice. This information is made available to USDA officials, officials of other Federal enforcement agencies, and to Congress for reporting purposes.

To ensure compliance with 28 CFR 42.405, RD compliance officers conduct compliance reviews which often involve a visual review of the recipients' posting of the required posters, and review advertising and community outreach to determine if the general public is made aware of the facility and that it is Federally financed, and therefore eligible for use on an equal opportunity basis. Community contacts are made with business and community leaders and participants in the program to obtain their knowledge and opinions of the facility's operation and determine if there have been allegations of discrimination made in the community.

Compliance officers utilize compliance review forms such as Form 400-8 to comport with the compliance review requirements of DOJ regulation 28 CFR Part 42, and Executive Order 12250. The frequency of compliance reviews is based on whether it is a loan or grant and the specific requirements of the program. Grants-only obligations only require a pre-award and a post-award compliance review. Where grants are utilized for revolving loan funds, compliance reviews are done on recipients every five years.

Form RD 400-4 is used by the Federal Crop Insurance Corporation, operating through the Risk Management Agency (RMA). RMA has competitive cooperative partnership agreement programs to carry out certain risk management education provisions of the Federal Crop Insurance Act. These programs are a) to provide agricultural producers with training opportunities in risk management, with a priority given to producers of specialty crops and underserved commodities [7 U.S.C. 1522(d)(3)(F)]; and b) to establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program [7 U.S.C. 1524(a)(2)]. Projects funded under these programs are for a maximum of one year.

Specifically, the burden to be cleared with this docket is as follows:

Reporting Requirements - Forms Approved in this Docket

Form RD 400-1, Equal Opportunity Agreement

This form is an agreement between Rural Development and a recipient of Federal financial assistance when a construction contract of \$10,000 or more is involved. The borrower agrees not to discriminate against any employee, or applicant for employment, and agrees to abide by the requirements of Executive Order 11246. The form is read and signed by the recipient. The burden is estimated to be 10 minutes.

Form RD 400-4, Assurance Agreement

This form is executed by recipients of Rural Development's Federal financial assistance as an assurance that the recipient will comply with the requirements of Title VI of the Civil Rights Act of 1964. This form is read and signed by the recipient, and the burden is estimated to be 15 minutes. Due to the seriousness of the requirements of this form, the recipient should take additional time to review its content before signing. This form is also executed by recipients of RMA's competitive cooperative partnership agreement programs to carry out certain risk management education provisions of the Federal Crop Insurance Act.

Form RD 400-6, Compliance Statement

This form is executed by a bidder or prospective contractor receiving a Federal construction contract financed by Rural Development assistance. The form is read and signed by a bidder or prospective contractor who agrees to abide by the requirements of Executive Order 11246. The burden for this form is estimated to be 10 minutes.

Form RD 400-7, Compliance Review for Recreational Loans to Associations

This form is used by trained Rural Development employees to do compliance reviews on recipients of Recreation Association loans to determine the recipient's compliance with Title VI of the Civil Rights Act of 1964. In addition to reviewing the recipient's operation, the employee is required to make community contacts with minorities, females, disabled and community-based organizations. The information required will be collected by RD compliance officials from the review of the recipients' records. The burden for the public is estimated to be 2 hours.

Reporting Requirements - Forms Approved Under Other OMB Numbers

HUD Forms 935.2A, Affirmative Fair Housing Marketing-Multifamily Housing, 935.2B, Affirmative Fair Housing Marketing Plan – Single-Family Housing (OMB 2529-0013) and 935.2D ORCF, Affirmative Fair Housing Marketing-Residential Care Facilities (OMB 2502-0605).

These are HUD forms that RD uses to avoid duplication and RD accounts for its own burden hours in this package.

The implementing regulations issued by the Department of Housing and Urban Development (HUD) and adopted by RD, require recipients and other participants in RD housing programs to prepare affirmative fair housing marketing plans (AFHMP), and to collect and maintain data to reflect compliance with the requirements of that plan. The AFHMP is a HUD form that is used by RD housing recipients to assure that recipients are marketing housing in a non-discriminatory manner to groups which are least likely to apply for housing.

The forms are prepared by Rural Development's Single-Family developers requesting RD's approval for subdivisions with five or more dwellings, and other participants in RD's housing program marketing five or more housing units for sale or rent; Multi-Family Housing applicants

having five or more rental units for rent and RD Community Facility borrowers to finance residential care facilities. These forms require recipients to market their available housing to individuals determined least likely to apply for the available housing. The burden for this activity is estimated to be 6 hours. The total estimated respondents are 5,969, using 6 man-hours per response, for a total of 35,814 man-hours.

Form CC-257, Monthly Utilization Report

The routine preparation and submission of this form is no longer required by the Department of Labor (DOL). Contractors must implement the specific affirmative action standards in accordance with 41 CFR 60-4.3(a)7, Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246, as amended). However, the Secretary of Labor has the authority to require the use of the information contained in the form, in instances involving the violations of the DOL, as deemed appropriate to further resolve the purpose of Executive Order 11246. There are no respondents or man-hours reported for this form in this package. RD notifies its field offices of any changes through various meetings and/or written notification.

Reporting Requirements - No Forms

Discrimination Complaints – Individuals who believe they have been discriminated against by employees of Rural Development, or its recipients of Federal financial assistance, have several options to file a complaint. Individuals may file a written complaint of discrimination with the RD local office, or through the USDA website or RD Civil Rights website. Complaints may also be filed with other Federal agencies (i.e., HUD or DOL). The burden for filing a written complaint of discrimination is estimated to be .5 hours.

Recordkeeping Requirements

Racial and Ethnic Data

Program regulations and form RD-400-4 “Assurance Agreement”, establishes requirements for records and recordkeeping, types of information needed and the requirements of compliance. Recipients of Rural Development’s Federal financial assistance are required to collect and maintain information on the number of persons benefitting from their programs in compliance with RD Instruction 1900-A. This information is used by the Agency to conduct compliance reviews and other monitoring activities for determining compliance with Title VI of the Civil Rights Act of 1964. The burden for this activity is estimated to be 16 hours, which is the time it takes to establish a system for collecting this data and developing an annual summary report.

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.

RD forms approved with this package are available electronically to view, and print through the RD website, USDA Service Center eForms browse option. Employees and customers with access credentials to USDA Service Center eForms may fill out, save and submit applicable forms electronically. The forms for HUD are available electronically on the HUD web site. We estimate that approximately 17% of all the information that is being requested in this docket is collected electronically.

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.

Recipients of Rural Development's program assistance who are also recipients of assistance from another Federal agency will not be required to prepare duplicate reports to meet Rural Development's reporting requirements. Rural Development will accept reports prepared by recipients for other Federal agencies when the information collected meets similar or the same civil rights requirements.

When necessary, Rural Development will use any information its recipients may already have available and will modify such information as necessary to meet the specified requirements.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The information collection and reporting requirements are uniform despite the size of entity. However, recipients who are housing providers with less than five units, are not required to complete affirmative fair housing marketing plans nor collect information showing compliance with the requirements of the plan.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This information is used by RD to comply with the Department of Justice (DOJ) Title VI Regulation 28 CFR Part 42 subpart F to ensure that Federal agencies which extend Federal financial assistance properly enforce Title VI of the Civil Rights Act and similar provisions in Federal grant statutes. Additionally, Section 42.407 – "Procedures to Determine Compliance" established RD requirements to conduct pre-award and post-award compliance reviews. The requirement to conduct compliance reviews is also based on the requirements of Executive Order 12250. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted, including pre-and post-awards, will be reported on the Implementation Plan and submitted to the Department of Justice.

The information collection requirements are considered to be the minimum necessary for determining a recipient's compliance with the requirements of the civil rights laws covered under this regulation.

Without the required information, visual inspections and community contacts, RD and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws. In addition, the Agency and its recipients would be without appropriate data and documentation to demonstrate that services and benefits are being provided to beneficiaries on an equal opportunity basis.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- a. Requiring respondents to report information more than quarterly.

Respondents are obligated to report all required information, however there are no special circumstances that would require respondents to report information more than quarterly. The State Director is responsible for requiring subsequent compliance reviews at intervals no less than 90 days, or more than five years, after the previous compliance review.

- b. Requiring written responses in less than 30 days.

No written responses required in less than 30 days.

- c. Requiring more than an original and two copies.

There is no requirement of requesting more than an original and two copies.

- d. Requiring respondents to retain records for more than five years.

Respondents are not required to retain records for more than five years.

- e. Not utilizing statistical sampling.

There is no such requirement.

- f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

There is no instance where Rural Development is using statistical sampling which has not been reviewed and approved by OMB.

- g. Requiring a pledge of confidentiality.

Respondents are not required to make a pledge of confidentiality.

- h. Requiring submission of proprietary trade secrets.

Respondents are not required to submit proprietary trade secrets.

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.

As required by the Paperwork Reduction Act of 1995, a 60-Day Notice was published on January 12, 2021, Federal Register Vol. 86, page 2380. There were no 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, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

Consultations were made with five recipients of Rural Development's Rural Rental Housing assistance on the requirements for data collection and recordkeeping. Programs such as Community Facilities and Water and Waste have mandatory hookup requirements, a clearly defined service area, and rate structure which allow consideration of service for all applicants/users.

- a. Director, United Pejepsco Housing, Brunswick, Maine
- b. Director, Sunbelt Management Company, Albertville, Alabama
- c. Administrator for Foothill Income Properties Limited Partnership, paradise Gardens III, Paradise, California
- d. Property Manager, Kite Business Services Inc., Salado, Texas
- e. Vice-President, Flynn Management Corporation, Clearwater, Florida

Recipients indicated they experienced no difficulty in collecting and maintaining this information; therefore, there were no major problems experienced in this regard.

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

No payments or gifts are given to respondents.

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

The information collected will be statistically summarized and will not convey a particular person's race/national origin. Persons providing this information are given assurance that the information is used only for monitoring and statistical purposes. RD has no policy, statute or regulation that requires giving assurance of confidentiality. Information is considered confidential and covered under the Privacy Act. Requests for information must be made under the Freedom of Information Act and will be processed in the usual procedure to protect the confidentiality of any person.

RD has a System of Record Notices (SORN) to cover collection of the information and the systems where the information is stored. Please refer to 84 FR 21315 issued on 5/14/2019.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

No information of a "sensitive nature" is requested.

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

See attached spreadsheet.

The burden for collecting information under this regulation is based on an estimated 27,000 respondents with 52,811 responses and 436,783 man-hours for completing the information collection requirements. This estimate was based on information in existing Agency reports and experience of Agency employees in handling the elements in the burden.

The estimated annualized cost to the respondents is \$8,319,295. The various types of respondents for this regulation were classified into three classes and wage classes were estimated as follows:

- Individual applicant/borrower or program assistance beneficiary - \$13 per hour
- Group type applicant/borrower - \$19 per hour
- Contractor/subcontractor - \$25 per hour

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

This regulation places no burden cost on respondents for capital, start-up, total operation, maintenance, or purchase of services. Please see spreadsheet for annual burden cost.

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

The total cost to the Federal Government is estimated to be \$2,209,389. This estimate is based on the cost of collecting and analyzing the information from the respondents at the salary level of the responsible RD employee.

The grade level and hourly salary ranges from a GS-5 to a GS-13 of the RD employees who collect and analyze the information from the respondents. The following is an approximation of how we arrived at the total cost to the Government.

The hourly rate of the employees who review discrimination complaints is a GS-12 step 1 at \$31.70 and a GS-13 step 1 at \$37.70 averaging \$34.70 x 80 hours per response multiplied by 250 responses per year equals \$694,000.

The hourly rate of the employees who conduct and complete compliance reviews GS-13 step 5 is \$42.73. Based on previous history, approximately one-half or 6 are reviewed per year out of 13 compliance reviews received annually. A review averages 8 hours to complete multiplied by \$42.73 equals \$341.84 multiplied by 6 equals \$2,051.

The average hourly rate of GS-13 step 5 employees who review the Affirmative Fair Housing Marketing Plans is \$42.73 x 4 hours x 5,969 reviews per year = \$1,020,221. A GS-9 is \$21.86 x 2 hours x 5,969 reviews per year = \$260,965. A GS-6 is \$116.08 x 1hour x 5,969 reviews per year = \$95,982. The summation of the cost for the GS-13, GS-9, and GS-6 is \$1,377,168.

Forms 400-1, -4, and -6 are reviewed by a GS-5 at an hourly rate of \$14.43 or GS-7 at an hourly rate of \$17.87 employee. The review, processing and filing of each form is estimated to take 20 minutes (.33). For calculation purposes the average rate of \$16.15 is used. $\$16.15 \times .33 = \5.33 x 25,548 forms equal a total of \$136,170. Figures are rounded.

The dollar amounts used for the wage grade come from mean wages from the Bureau of Labor Statistics, May 2019 National Occupational Employment and Wage Estimates United States (http://www.bls.gov/oes/current/oes_nat.htm).

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

There is a decrease in responses and burden hours of 14,779 and 105,586 respectively, due to the removal of form RD 400-8 "Compliance Review." The information in this form is captured in other reporting requirements in this collection.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

Data collected by housing program recipients will be used by RD to make annual statistical reports to Congress, as required by Public Law 100-242 of 1987. A compilation of all RD civil rights activities implementing the various civil rights laws and regulations and the number of compliance reviews conducted will be reported on the Implementation Plan and submitted to the

Department of Justice. This information is also used internally by RD for monitoring and compliance review purposes and will be summarized as appropriate for Agency reports going to other Federal Agencies for reports to Congress.

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.

A large majority of the forms in this package are also approved under other packages as well. This is especially true when a new program is established. This would mean multiple expiration dates on each form which lead to confusion for our lenders, borrowers and the general public.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-I.

There are no exceptions to the certification statement identified in item 19 on OMB 83-I.

19. How is this information collection related to the Service Center Initiative (SCI)? Will information collection be part of the one-stop-shopping concept?

This information is not related to and will have no impact of the SCI initiative. The information collection under this regulation is case specific.