

2021 SUPPORTING STATEMENT

7 CFR 1901-E, Civil Rights Compliance Requirements Common Forms Package OMB No. 0575-XXXX

This information collection will be utilized by the Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS), Agencies within Rural Development (RD) for various loan and grant making activities. We are requesting a 3-year clearance of this package and classification as a Common Form package.

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.

The Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS) agencies within the Rural Development mission area, hereinafter referred to as Agency, is the credit Agency for agriculture and rural development for the United States Department of Agriculture. The Agency offers offer loans, grants and loan guarantees to help create jobs and support economic development and essential services such as housing; health care; first responder services and equipment; and water, electric and communications infrastructure 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.

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

REPORTING REQUIREMENTS - FORMS

Information collected includes the following forms:

- 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 response time 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 response time 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.

- 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 response time is estimated to be 10 minutes.

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.

The information collected is of such type and nature that the use of improved information technology, such as data and word processing would not significantly reduce the public burden. Information for each loan/grant application is unique and, therefore, cannot take significant advantage of this technology. Forms have been automated and are available on the USDA Service Center website. Provision of information is faster, however the time for electronic input roughly equals the time for handwriting the form.

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.

Every effort has been made to identify and avoid unnecessary duplication of information collection. The conditions involved with every loan/grant request are unique. Duplication of information is required only when determined necessary to ensure all involved parties have sufficient information to carry out their responsibilities. There is no duplication of information required by other Federal Government agencies.

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 required by the regulations governing the use of the forms cleared in this collection places no burden on small businesses or other small entities beyond, that which is performed in normal business practice.

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. No such requirements exist
- g. Requiring a pledge of confidentiality. There are no such requirements.
- h. Requiring submission of proprietary trade secrets. There are no such requirements.

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, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

On November 5,2021, in Vol. 86, No. 61116, USDA's Rural Development published the notice of information collection and request for comments in the Federal Register. **No comments were received.**

In the 60-day Federal Register notice, RD accounted for each form to have 1 respondent and a 10- minute place holder for forms 400-1 and 6, Form 400-4 will show a 15-minutes and 400-7 will show 2 hours of burden per form. The actual burden hours for each of the forms will be calculated when the program areas that utilize these forms account for the burden of the form(s) in their individual collection package request for common forms (RCF) submission.

This is a new collection package request, and the agency has not solicited comments outside the 60-day notice. The Agency will solicit feedback when the associated collection for the programs that utilize the forms contained in this package are being updated and will be accounted for in their submission of their clearance package and RCF.

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.

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.

As discussed in Question 8, the burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the forms. The time required to complete this information collection will vary depending the individual collection package submitted for approval. The time per response can include but is not limited to the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

RD is requesting approval for one respondent per form as a place holder with the corresponding times to complete form as enumerated in question 2 and documented on the accompanying spreadsheet. Once RD receives approval of this common forms package. Rural Development will reflect the approved OMB control number of this common forms package on each form within this package and account for the specific burden for each form within their individual collection packages when they seek OMB approval or re-authorization.

The respondents to this collection are from multiple RD programs. The estimated annual costs to respondents cover a wide range of professions including, but not limited to applicants/borrowers, contractors, subcontractors, group type applicant/borrowers. Therefore, the Agency used an estimated hourly wage of \$35.16/hour (including benefits as a percentage of total compensation for private trades of 29.9 percent¹) from the “all occupations category”, U.S. Department of Labor mean hourly rates in the United States in May 2020 (https://www.bls.gov/oes/current/oes_nat.htm).

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

There are no capital/start-up or operation/maintenance costs involved.

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

Government costs will be covered under information collections by each program using these forms.

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

This is a new information collection. The burden estimate for this collection is solely attributed to the fact that the forms will be used throughout RD.

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

Data collected by 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.

RD plans to display the new OMB control number and expiration date for the information collection on the forms after approval.

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.