

Supporting Statement for Section 504 Notice of Proposed Rulemaking Proposed Civil Rights Information Collection

A. Justification

1. Circumstances Making the Collection of Information Necessary

This Information Collection Request is for an updated collection of information as proposed in the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) Notice of Proposed Rulemaking (NPRM) entitled Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities (RIN: 0945-AA15).

Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, provides that no otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

The Department is seeking PRA approval for the notice requirement at § 84.8, which is a covered third-party disclosure requirement.

2. Purpose and Use of Information Collection

The Section 504 implementing regulation would prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department (recipients). The Department is responsible for developing regulations to implement Section 504 and for ensuring that recipients do not deny benefits or services to qualified individuals based on disability.

The purpose of this information collection is to ensure recipients adhere to the statutory requirements under Section 504. The proposed disclosure requirement would help recipients

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demonstrate compliance with Federal civil rights laws and their awareness of their obligations under those laws and respective HHS implementing regulations. In addition, the proposed information collection is a cost-efficient approach that reduces the burden placed on recipients by decreasing the need for more in-depth Federal civil rights investigations that impose greater costs, both on the recipient and on the Department.

The following third party disclosure requirement is included in this request:

3. Notice of Nondiscrimination: The NPRM proposes requiring each recipient to provide a notice of nondiscrimination to employees, applicants, participants, beneficiaries, and other interested persons. The NPRM requires the notice to be made available in such manner as the head of the recipient or his or her designee finds necessary to apprise such interested persons of the protections against discrimination assured them by Section 504.

This requirement helps clearly inform individuals of their civil rights under Section 504 while also providing recipients with necessary flexibility for how they will provide the notice.

The Department believes this proposed requirement will help to reduce barriers to access for individuals with disabilities while providing certainty to recipients and consumers about what recipients' obligations are and what rights consumers have.

The Department notes that this proposed notice requirement contains fewer specific steps than the notice requirement in the existing Section 504 Regulation at 45 CFR 84.8, while extending to more smaller recipients with less than fifteen employees. We believe that advancements in technology, such as the use of websites by recipients, will lower the notice costs for recipients and limit burdens.

Additionally, this notice requirement is almost exactly the same as the requirement under Title II of the Americans with Disabilities Act at 28 CFR 35.106, and some covered entities

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under Title II are also recipients under Section 504.

4. Impact on Small Businesses or Other Small Entities

The information collection proposed in the Section 504 NPRM provides flexibility to recipients, including small businesses, to determine the most appropriate methods for compliance for their business, depending on its size and capabilities.

As discussed in more detail in the corresponding regulatory impact analysis, the Department has concluded that because the costs of the proposed rule are small relative to the revenue of recipients, including covered small entities, and because even the smallest affected entities would be unlikely to face a significant impact, the proposed rule, including its information collection requirements, will not have a significant economic impact on a substantial number of small entities. Across all 453,084 recipients, the majority of whom are small recipients with less than fifteen employees, the total cost of compliance with this notice provision is estimated to be \$8.093 million.

6. Consequences of Less Frequent Collection

The proposed rulemaking for Section 504 does not require recurring collection.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

There are no special circumstances for collecting this information. The proposed collection of information requirements in the Section 504 NPRM are consistent with the applicable guidelines contained in 5 CFR 1320.5.

8. Comments in Response to the Federal Register Notice/Outside Consultation

The Department solicited public comment on the draft notice requirement at § 84.8 in a notice of proposed rulemaking titled *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities* and published in the Federal Register at 88 FR 63392

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(Sept. 14, 2023), RIN 0945-AA15. Any public comments received on the proposed disclosure requirement will be addressed in the final rule.

9. Explanation of Any Payment/Gift to Respondents

The proposed information collection does not provide for payments or gifts to the respondents. Recipients of Federal financial assistance from HHS are currently required to provide notice to the public that they do not discriminate based on disability without any payment or gift for said notice. This updated notice provision does not provide for any payment or gift for complying with its notice requirement.

10. Assurance of Confidentiality Provided to Respondents

Data will be kept private to the extent allowed by law, including the confidentiality provisions of the Privacy Act of 1974 (5 USC 552a) and the Freedom of Information Act (5 CFR 552) would apply.

11. Justification for Sensitive Questions

The Department does not require that sensitive questions be asked in this information collection.

12. Estimates of Annualized Burden Hours (Total Hours & Wages)

The overall total burden hours for respondents to comply with the proposed information collection requirements of the Section 504 NPRM is 256,763 burden hours at an approximate cost of \$8.093 million. These estimates take into account that recipient respondents to the information collection vary greatly in size and small entities may require fewer burden hours to conduct certain compliance activities, while large entities may require more burden hours than those provided here due to their size and complexity. Greater details are presented below.

12A. Estimated Annualized Burden Hours

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The overall total burden hours for respondents are 256,763.

Proposed § 84.8 requires recipients to make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities of the recipient, and make such information available to them in such manner as the head of the recipient or his or her designee finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this part. This notice gives broad flexibility in terms of how often it should be updated, how it will be disseminated, and where it will be posted. Accordingly, the Department estimates the burden for responding to the proposed notice requirement would be 34 minutes¹ and that administrative or clerical support personnel would perform these functions. Because of the broad discretion given to recipients for the best method to provide notice, we estimate there will be a single response for each recipient. The Department has invited potential respondents to comment on its assumption regarding number of responses per respondent and the ultimate burden estimate we ascribe to this requirement, including a discussion of respondents basis for their computation.

This Information Collection Request sometimes counts the “number of respondents” as the number of entities subject to a regulatory requirement and in other cases provide an estimate of individuals who are affected by entities’ compliance activities, or who may make use of a provision to exercise an individual right under the NPRM Rule. Here, the respondents include all recipients of Federal financial assistance covered by the rulemaking.

¹ Here we rely mainly on the calculations of the Regulatory Impact Analysis for the implementing regulation for Section 1557 of the Affordable Care Act, also drafted by OCR and available at 87 CFR 47824, 47908 (Aug. 4, 2022).

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Proposed Annual Burden of Responses in Year One/Subsequent Years Following Publication of the Final Rule						
Section	Type of Respondent	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden Hours per Response	Total Burden Hours
§ 84.8 Notice	All recipients	453,084	1	453,084	34/60 ²	256,763

12B. Estimated Annualized Burden Costs

The total cost of this information collection based on 2021 dollars is \$8.093 million.

Coordination Efforts

We do not anticipate coordination efforts from this notice requirement.

Notices

The proposed rule would require a recipient to provide a Notice of Nondiscrimination to employees, applicants, participants, beneficiaries, and other interested persons. This provision resembles the notice requirement of Title II of the ADA.³

The Notice of Nondiscrimination may take the form that the head of the recipient, or their designee, finds necessary to appraise interested persons of the protections against discrimination assured them by Section 504.

Because of this flexibility, we assume that recipients will require only a single posting or response. We then base our estimate of the total numbers of hours per recipient to provide this response from the hours estimated in the Regulatory Impact Analysis for the Section 1557 NPRM because the notice will be similar and there is significant overlap between recipients under Section 504 and covered entities under Section 1557.⁴

² Burden is displayed in the number of minutes to complete over 60 minutes.

³ 28 CFR 35.106.

⁴ See 87 FR 47824 (Aug. 4, 2022).

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We then use U.S. Bureau of Labor Statistics data to estimate the hourly wage rates of the employees responsible for the notices and double those rates to account for benefits.

Proposed Annual Burden Costs				
Regulation Burden	Type of Respondent	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
§ 84.8 Notice	All recipients	256,763	\$15.76 ⁵	\$8,093,160

13. Estimates of Other Total Annual Cost Burden to Respondents or Record

Keepers/Capital Costs

There are no additional annual or capital costs associated with this information collection.

14. Annualized Cost to Federal Government

The NPRM would require recipients to create certain information to comply with the Rule's notice requirement. However, OCR gives broad latitude to the recipient to determine the method of the notice and does not produce a form on which the information is collected. OCR generally does not collect and store this information, nor does OCR require recipients to provide OCR with the notice information they create to comply with the Rule. There are two exceptions to this general rule. First, OCR does collect electronically, via HHS Form 690, the Assurance of Compliance (previous PRA approval via OMB control # 0945-0008), which includes compliance with Section 504. Second, OCR collects documentation from covered entities in the course of normal investigations and compliance reviews to determine compliance with the entirety of Section 504, including § 84.8. This portion of the collection is done outside of OCR and is a function completed entirely by the covered entities. The costs to covered entities that are federal entities are included among the overall burden estimates for covered entities, and thus are not

⁵ Mean hourly wage rate for file clerks. U.S. Bureau of Lab. Stats., Occupational Employment Statistics, Occupational Employment and Wages, May 2021, https://www.bls.gov/oes/2021/may/oes_nat.htm (last visited Aug. 21, 2023).

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addressed here. There is otherwise no cost to the federal government for this portion of the information collection.

The cost to the Federal government for these two situations will be minor since investigators will only review whether recipients have affirmed compliance with § 84.8 of Section 504 through HHS form 690 during the course of a normal investigation or compliance review. Additionally, investigators already collect this information during the course of their normal duties and the updates to Section 504 will not impact the information collected by HHS form 690. Accordingly, we estimate that, at most, there will be an annual burden of approximately 17 hours performed at a GS-12 Step 1 investigator with an hourly salary of \$45.29, resulting in a total cost of \$769.93.

15. Explanation for Program Changes or Adjustments

This is a new ICR request.

16. Plans for Tabulation and Publication and Project Time Schedule

There are no plans for tabulation or publication of the data collection. While the notice requirement of § 84.8 will require recipients to make information about its compliance with this rulemaking available to members of the public in a format of their choosing, there will be no data collection by OCR absent its normal investigations or compliance reviews of covered entities.

Publication of the NPRM in the Federal Register occurred on September 14, 2023. Any data associated with this notice requirement would have to be made available by recipients in the format of their choosing following final publication of this rulemaking.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

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The Department certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.