

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

(301) 1895-NEW

RIN Number: RIN 1895-AA01

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 hard copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information, or you may provide a valid URL link or paste the applicable section. Please limit pasted text to no longer than 3 pages. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, make note of the sections or changed sections, if applicable.

This is a new information collection necessitated by Executive Order 13559 (the “Executive Order”), Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations. Executive Order 13559 amended a prior Executive order to:

- Require agencies that administer or award Federal financial assistance for social service programs to implement protections for the beneficiaries or prospective beneficiaries of those programs. These protections include: (1) providing referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services; and (2) ensuring that written notice of these and other protections is provided to beneficiaries before they enroll in, or receive services from, the program;

- Affirm that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of that interference, and must be made on the basis of merit, not on the basis of the religious affiliation, or lack of affiliation, of the recipient organization;

- Affirm that the Federal government has an obligation to monitor and enforce all standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;

- Clarify (1) the principle that organizations engaging in explicitly religious activity must separate these activities in time or location from programs supported with direct Federal financial assistance (the prior Executive Order stated this requirement as applying to “inherently religious” activity); (2) that participation in any explicit religious activity cannot be subsidized with direct Federal financial assistance; and (3) that participation in those activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance;

- Emphasize that religious providers are welcome to compete for government social service funding and maintain a religious identity as described in the Executive order;
- Require agencies that provide Federal financial assistance for social service programs to post on their Web sites regulations, guidance documents, and policies that have implications for faith-based and neighborhood organizations, as well as a list of entities receiving that assistance;
- Clarify that the standards in the current and proposed agency regulations apply to sub-awards as well as to prime awards; and
- Direct agencies to adopt regulations and guidance that distinguish between “direct” and “indirect” Federal financial assistance for the purpose of implementing this Executive order.

In addition, Executive Order 13559 created the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies.

The Executive order also required that, following receipt of the Working Group’s report, the Office of Management and Budget (OMB), in coordination with the U.S. Department of Justice, issue guidance to agencies on the implementation of the Executive order. In August 2013, OMB issued such guidance. In this guidance, OMB instructed specified agency heads, including the Secretary of Education, to adopt regulations and guidance that will fulfill the requirements of the Executive order and to amend regulations and guidance to ensure that they are consistent with Executive Order 13559. These proposed new regulations and amendments, which include the subject information collection requirements, are part of the Department’s efforts to comply with the Executive order.

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.

The information collected under these new requirements will serve the purpose of notifying beneficiaries of their rights when receiving program services under a program of the Department from a faith-based organization, including the right, established under the Executive Order, to request a referral to a non-faith based provider of services, and requiring faith-based grantees, subgrantees, and contractors that provide program services to make reasonable efforts to refer beneficiaries to another provider, when requested.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Also describe any consideration given to using technology to reduce burden.

Although the Department will not impose electronic information collection requirements, grantees affected by this information collection request may use automated, electronic, mechanical or other technological techniques to fulfill the requirements of this information collection. For example, grantees may provide the required notice to recipients of services by email and permit responses via email, or may maintain those responses in an electronic format. However, the Department does not have specific information concerning the extent to which grantees use or will plan to use these methods of delivery, nor will it require them to use such methods.

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.

This is a new information collection, which requires the collection and identification of types of information that the Department does not currently collect because the Department has never tracked grantees by religious affiliation. The Department is not aware of any instances of this data being collected currently, and this understanding is corroborated by the challenges associated with compiling the data necessary for this information collection request.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

This information collection will have an impact on small businesses that are recipients of Department grants, as well as small businesses that contract with faith-based organizations to provide services under a Department program. The Working Group consulted extensively with faith-based organizations in its preparation of the model regulations. Because many faith-based organizations are small businesses, we are confident that the interests of these entities were taken into consideration. Note: while the Department published a separate NPRM, it has joined with eight other Federal agencies to publish a joint notice of final rulemaking. None of the agencies received comments related to the specific form in which the agencies would collect data. However, some of the agencies received general comments that the requirement to provide notices to beneficiaries and to make reasonable efforts to refer a beneficiary to an alternative service provider were too burdensome. These commenters asked that they not be required to provide the notices or make reasonable efforts to refer beneficiaries. Because the agencies are constrained by Executive Order 13559 to require faith-based organizations to provide notice and

make reasonable efforts to refer a beneficiary upon request, the Department could not make these requested changes.

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 information implicated in this information collection request is required for the Department to implement the requirements of the Executive Order.

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;**
- **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 than 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 that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or 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 special circumstances. The new proposed information collections would require grantees to retain and provide information, but not to report that information to the Department in any specified timeframe or format. There is no requirement for records to be maintained longer than three years. No statistical surveys, pledges of confidentiality or trade secrets are involved.

8. As applicable, state that the Department has published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

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

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.

The Department published the Notice of Proposed Rulemaking with a 60-day comment period, pursuant to 5 CFR 1320.11.

The Working Group consulted extensively with stakeholders in its development of the model regulations which the Department now proposes to implement.

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

No payments or gifts are provided to respondents for completing this information request.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If personally identifiable information (PII) is being collected, a Privacy Act statement should be included on the instrument. Please provide a citation for the Systems of Record Notice and the date a Privacy Impact Assessment was completed as indicated on the IC Data Form. A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided. Requests for this information are in accordance with the following ED and OMB policies: Privacy Act of 1974, OMB Circular A-108 – Privacy Act Implementation – Guidelines and Responsibilities, OMB Circular A-130 Appendix I – Federal Agency Responsibilities for Maintaining Records About Individuals, OMB M-03-22 – OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, OMB M-06-15 – Safeguarding Personally Identifiable Information, OM:6-104 – Privacy Act of 1974 (Collection, Use and Protection of Personally Identifiable Information). If the collection is subject to the Privacy Act, the Privacy Act statement is deemed sufficient with respect to confidentiality. If there is no expectation of confidentiality, simply state that the Department makes no pledge about the confidentiality of the data.

No assurances of confidentiality are being provided.

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

There are no questions of a sensitive nature included in this information collection.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents by affected public type (federal government, individuals or households, private sector – businesses or other for-profit, private sector – not-for-profit institutions, farms, state, local or tribal governments), frequency of response, annual hour burden, and an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. All narrative should be included in item 12. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in the ROCIS IC Burden Analysis Table. (The table should at minimum include Respondent types, IC activity, Respondent and Responses, Hours/Response, and Total Hours)**
- **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

As stated in the PRA section of the NPRM preamble, we do not currently collect or maintain data regarding faith-based organizations that receive grants from the Department. However, the Department estimates that 4.5% of our discretionary grants are awarded to faith-based organizations. Please refer to the NPRM PRA section of the preamble for a description of how we estimated this percentage. Also, because we have no information about the percentage of our subgrantees that receive assistance under State-administered programs, we have used the same 4.5% estimate to calculate the number of beneficiaries served under the applicable State-administered program of the Department by subgrantees that are faith-based organizations. Please note that the cost estimates associated with the NPRM have been replaced with revised cost estimates because the Department of Labor, Bureau of Labor Statistics tables for total employer costs in the education sector have risen slightly between September, 2014 and September 2015.

Notice Requirement

We estimate that the time required for each faith-based grantee to provide the required notice to each beneficiary is two minutes. We estimate that a total of 10,003,323 students and other beneficiaries are served by discretionary grant programs. Based on the 4.5% estimate stated above, we estimate that, of the total number of beneficiaries served under these programs, 450,150 ($10,003,323 \times 4.5\% = 450,150$) students and other beneficiaries are served by faith-based organizations. Thus, we estimate that the total time burden imposed to provide notice to beneficiaries is 15,005 hours ($450,150$ [beneficiaries] \times 2 [minutes per beneficiary] \div 60 [to convert minutes to hours] = $15,005$ hours).

We estimate that the Department's only State-administered program that authorizes subgrants to nonprofit, private organizations, including faith-based organizations, the Twenty-First Century Community Learning Centers program (TCCLC), served in fiscal year 2013 approximately 1,733,000 students. We estimate that approximately 77,985 ($1,733,000 \times 4.5\% = 77,985$) students are served by faith-based subgrantee organizations under that program. We estimate the total burden that would be imposed on faith-based organizations to provide notices under TCCLC by these proposed regulations is 2,600 hours ($77,985$ [students] \times 2 [minutes per beneficiary] \div 60 [to convert minutes to hours] = $2,600$ hours).

Therefore, we estimate that the total notice burden that would be imposed on faith-based organizations that are grantees or subgrantees under all service programs of the Department is 17,605 hours ($15,005$ [discretionary grant notice burden] + $2,600$ [TCCLC notice burden] = $17,605$).

Using the Bureau of Labor Statistics' total costs per hour worked for all workers in the private educational services industry through September, 2015 of \$41.66, we estimate the costs to faith-based grantees and subgrantees under all service grant programs of the Department is \$733,424 per year ($17,605$ [hours to provide notice under the TCCLC and discretionary grant programs] \times $\$41.66 = \$733,424$).

The total number of respondents (beneficiaries that would have to receive notices under the proposed regulations) served by grantees and subgrantees that are faith-based organizations is 528,135 ($450,150$ [beneficiaries served under discretionary grant programs] + $77,985$ [beneficiaries served under the TCCLC program]).

Referral Requirement

We estimate that 0.10% of students and other beneficiaries would request alternative placements. We will monitor our programs to assess the accuracy of this estimate.

As described in the PRA section of the preamble for this NPRM, we estimate that the time required for the faith-based organization to make a reasonable effort to identify an alternative provider and refer a beneficiary to that provider would average about two hours. This

estimate includes the time required to identify service providers that have the capacity to provide similar services, preferably under the same or similar programs to the one under which the beneficiary is being served by the faith-based organization. The estimate also includes the time required to determine whether one of the alternative providers is acceptable to the beneficiary. Also, depending on whether the beneficiary asked the faith-based organization to follow up either with the beneficiary or the alternative service provider to determine whether the referral is successful, this estimate includes the time required to do the follow-up.

Under the discretionary grant programs of the Department that provide services to beneficiaries, we estimate that faith-based organizations will have to make reasonable efforts to refer 451 students and other beneficiaries ($450,150$ [students served by faith-based grantees \times 0.10% [percent of students that would request referrals] = 451 referrals) and faith-based organizations will need 902 hours to identify alternative providers and make referrals to those providers (451×2 [hours per referral] = 902).

Under the TCCLC program, faith-based subgrantees would have to make reasonable efforts to refer 78 students ($77,985$ [students served by faith-based subgrantees] \times 0.10% [percent of students requesting referral] = 78 referrals) and faith-based organizations would take 156 hours (78×2 [hours per referral] = 156 hours) to make reasonable efforts to refer students to alternative service providers.

Adding the referral burden that would be imposed on faith-based grantees (902 hours) and subgrantees (156 hours) under the discretionary grant and the TCCLC programs, the total hourly burden of making reasonable efforts to refer students and other beneficiaries to alternative service providers is 1,058 hours. Using the Bureau of Labor Statistics' total costs per hour worked for all workers in the private educational services industry through September, 2015 of \$41.66, we estimate the costs associated with grantee and subgrantee referrals are \$44,076 per year ($1,058$ [referral hours under the TCCLC and discretionary grant programs] \times $\$41.57$ = \$44,076).

Thus, the total dollar burden for faith-based organizations to notify students (\$733,424) and make reasonable referral efforts (\$44,076) under the TCCLC and discretionary grant programs of the Department would be \$777,500 per year ($\$744,500 + \$44,076$).

The total number of respondents (beneficiaries for whom faith-based grantees and subgrantees would have to make reasonable referral efforts) is 529 (451 [beneficiaries served under discretionary grant programs] + 78 [beneficiaries served under the TCCLC program]).

Notice and Referral Burden for Faith-Based Contractors

These proposed regulations would impose a duty on grantees and subgrantees to include conditions in contracts with faith-based organizations that provide program services to students and other beneficiaries of Department programs. These conditions would require those faith-based contractors to notify beneficiaries of their rights under the Executive Order and to make reasonable efforts to refer beneficiaries to alternative service providers.

As explained more fully in the NPRM PRA section, the Department does not have credible information as to how many such contracts exist or how many beneficiaries might be served by those faith-based organizations. However, we have made a preliminary estimate that 14,151 students and other beneficiaries are served by faith-based contractors. Using that number, we have estimated that faith-based organizations would be subject to a total notice and referral burden of 500 hours. The 500 hour burden is the result of the following calculations:

- $14,151 \text{ [beneficiaries]} \times 2 \text{ [minutes per beneficiary to provide notice]} \div 60 \text{ [to convert to hours]} = 472 \text{ hours to notify beneficiaries; plus}$
- $14,151 \text{ [beneficiaries]} \times 0.1\% \text{ [referral percentage]} = 14 \text{ beneficiaries that would request referrals, requiring 28 hours (14 [beneficiaries]} \times 2 \text{ [hours per referral]) to make reasonable efforts to refer beneficiaries.}$

Based on these calculations, the total cost to faith-based contractors to provide notice and make referrals would be \$20,830 ($500 \times \$41.66 = \$20,830$). This estimate is a placeholder, and we sought comment on this estimate in the NPRM, however, we did not receive any comment on whether this minimal burden estimate was accurate and reasonable. Therefore, we continue to use this estimate, changed only by the fact that the total cost of labor in the education employment sector has risen slightly between September, 2014 and September, 2015.

Total costs

The total costs for grantee, subgrantee, and contractor faith-based organizations to notify beneficiaries and make referrals is \$798,330 ($\$777,500 \text{ [grantee and subgrantee notice and referral burden]} + \$20,830 \text{ [contractor notice and referral burden]} = \$798,330$).

Total number of respondents and burden hours

The total number of respondents to whom faith-based organizations would have to provide notice and make reasonable referral efforts under grants, subgrants, and contracts is as follows:

$542,829 \text{ respondents (528,135 [beneficiaries provided notice by grantees and subgrantees]} + 529 \text{ [beneficiaries referred by grantees and subgrantees]} + 14,151 \text{ [beneficiaries provided notice by contractors]} + 14 \text{ [beneficiaries referred by contractors]})$

The total hour burden hours for providing notice and making reasonable referral efforts by grantees, subgrantees, and contractors is as follows:

$19,163 \text{ hours (17,605 [grantee and subgrantee notice hours]} + 1,058 \text{ [grantee and subgrantee referral hours]} + 500 \text{ [contractor notice and referral hours]} = 19,163$).

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- **The cost estimate 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. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and acquiring and maintaining record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices. Also, these estimates should not include the hourly costs (i.e., the monetization of the hours) captured above in Item 12**

Total Annualized Capital/Startup Cost:

Total Annual Costs (O&M):

Total Annualized Costs Requested:

As described in the NPRM PRA section, we estimate that the notice and referral requirements in the proposed regulations would add virtually no record-keeping burden in addition to the record-keeping burden that already exists under information collection requests currently approved for program performance reports. We will monitor these burdens to determine whether, under some programs, there are appreciable burdens such that, in the future ICRs for program performance reports, we may need to add burden hours for record-keeping associated with these proposed regulations.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are virtually no costs to the Federal government that would result from these proposed regulations. These new regulations will primarily result in costs to grantees and subgrantees. The standard costs that the Federal government incurs related to monitoring of

grants will continue to apply, and we do not expect these new requirements to increase those costs in a measurable way.

15. Explain the reasons for any program changes or adjustments. Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are result of new statute or an agency action (e.g., changing a form, revising regulations, redefining the respondent universe, etc.). Burden changes should be disaggregated by type of change (i.e., adjustment, program change due to new statute, and/or program change due to agency discretion), type of collection (new, revision, extension, reinstatement with change, reinstatement without change) and include totals for changes in burden hours, responses and costs (if applicable).

This is a new information collection. This results in a program increase of 542,829 responses and 19,163 hours.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There currently are no plans for publication of the data compiled in this information request.

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.

The Department will display the expiration date for the burdens associated with these proposed regulations.

18. Explain each exception to the certification statement identified in the Certification of Paperwork Reduction Act.

There are no exceptions to the certification statement for these proposed regulations.