

Supporting Statement for Paperwork Reduction Act Submission
Reports to SBA: Provisions of 13 CFR 120.461-464, 120.473, 120.1510
OMB Control Number 3245-0077

A. Justification

1. Circumstances Necessitating the Collection of Information.

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 applicable section of each statute and regulation that mandates or authorizes the collection of information.

This information collection is authorized by 15 U.S.C. § 650(a) and § 634(b) (7) and is necessary for SBA to properly regulate and examine Small Business Lending Companies (SBLCs) and Non-Federally Regulated Lenders (NFRL) for safety and soundness. This submission is a request to modify an existing collection of information that is currently approved under OMB Control Number 3245-0077. The changes are necessary because of revisions to SBA's regulations governing oversight of these SBLCs and NFRLs.

Changes to Existing Information Collection

1. The revised regulations relocated existing reporting requirements and added new requirements, as a result the title of the collection has been changed from "Reports to SBA: 13 C.F.R. 120.472 to "Reports to SBA: 13 C.F.R. 120.461-464, 473 and 1510."
2. Currently, SBLCs have to file (i) Annual Reports (including audited financial statements); (ii) Reports of Administrative and Legal Proceedings; (iii) Stockholder Reports; (iv) Reports of Changes (in organization and financing); (v) Notice of capital impairment; and (vi) Other reports as required by SBA. As a result of the revised regulations these reporting requirements will be extended to Non-Federally Regulated Lenders (NFRLs).
3. The following new reporting requirements will be added for both NFRLs and SBLCs: (i) Quarterly Condition Reports (including certain certifications); (ii) Reports of Changes in Financial Condition (also including certain certifications); (iii) notice of a change in auditors; and (iv) Capital Restoration Plans, where applicable.
4. SBLCs eligible to be exempt from the SBLC supervision and enforcement statutory provisions will have to report on direct examination activity and regulation by Federal Financial Institution Regulators or state banking regulators.
5. Under current regulations SBLCs are also required to retain certain substantiating documents for the financial statements and reports submitted to SBA. Such documents include corporate charters and bylaws, applications for eligibility determination, capital stock certificates or stubs, general and subsidiary ledgers and journals, stock ledgers, stock transfer registers, and all minute books. SBLCs are also required to retain all documents and materials related to or supporting an SBA loan, for a period of 6 years following final disposition of the loan. These documents include applications for financing, participation and escrow accounts, and financing instruments. These recordkeeping requirements will be extended to NFRLs.

6. All SBLCs and NFRLs will be required to maintain a capital adequacy plan. The capital adequacy plan will detail Board of Director approved capital adequacy goals towards maintaining the financial institution's financial strength.

2. How, By Whom and For What Purpose will Information Be Used.

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 respondents will consist of all SBA Supervised Lenders. The reporting and recordkeeping requirements will facilitate safety and soundness examinations and appropriate supervision of the SBA's licensed SBLCs and NFRLs. Annual and interim financial information will be analyzed by program management to timely assess the lenders' financial strength, as well as their compliance, with relevant program regulations (e.g. capital and SBLC licensing regulations). Other reporting requirements will update program management on the operational status of the SBA Supervised Lender and timely notify SBA of (i) changes in structure, personnel, auditors, and financial condition and (ii) potential financial exposure. Informed, SBA as supervisor and guarantor of 50 to 85% of an SBA Supervised Lender's portfolio, could intervene (where appropriate) to protect the interest of the United States.

3. Technological Collection Techniques

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 ... Also describe any consideration of using information technology to reduce the burden.

Each lender is free to select the method for collecting pertinent information used in preparing its financial statements. There are currently no barriers to prevent transmission of this information to SBA via e-mail, data diskette, or facsimile with a paper copy sent via regular mail. All audited financial report filings are to be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and must include an opinion from the independent accounting firm engaged in the audit. This form of presentation is determined by the accounting profession and does not lend itself to technological applications centered on data delivery.

4. Avoidance of Duplication

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.

The collection of the required information and reports, including an annual audit of financial statements, as well as the requirements for internal control and records retention, are largely information and reporting already maintained by the SBA Supervised Lenders (SBLCs and NFRLs) for operational and financial purposes. It should be further noted that while financial data from these lenders may be collected when preparing consolidated financial statements of the parent organization, SBA confines its collection and data analysis to the financial statements of the lending entity. No other report format is available to SBA that would provide the relevant financial information presented in the audited financial statements.

5. Impact on Small Businesses or Other Small Entities

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

This collection of information will not have a significant economic impact on a substantial number of the affected SBA Supervised Lenders.

6. Consequences if Information is Not Collected

Describe the consequence to the 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.

Failure to collect and review this information would increase the risk of losses and have an adverse impact on the costs of operating the SBA guaranteed financial assistance program. Less frequent collection of this information would subject SBA to greater ambiguity and lessens the Agency's understanding of the true operating conduct of the regulated entities. This too would increase the risk of program losses.

7. Existence of Special Circumstances

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

No special circumstances exist; however, if it is determined that a lender is operating in a state of financial distress, SBA may require more frequent reporting of its financial condition. This could include monthly financial reporting; however, this option would only be considered on an exceptions basis. In addition, this collection of information requires retention of certain records for a period of 6 years after the life of the loan. This retention requirement is consistent with the statute of limitations for causes of action involving loan debts.

8. Solicitation of Public Comment

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)... Summarize public comments received. 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, or reporting format (if any...

Notice of this information collection with request for public comment was published as part of the proposed rule for SBA's Lender Oversight in the Federal Register. See 72 FR 61752 (October 31, 2007). The comment period ended on December 31, 2007. SBA received several comments in regards to this information collection, including generally whether the estimated cost burden for lenders to comply with this information collection may be understated.

One commenter in particular questioned whether the baseline costs for lenders to comply with the audited financial statements requirement were too low but did not provide any specific basis for obtaining a different estimate. In developing the estimates, SBA considered

information it had received from various SBLCs. SBA still believes that these estimates are reasonable and therefore, the agency has not made any adjustments.

Approximately 90 commenters said that SBA failed to provide an estimate for the costs that would accrue to lenders to respond to or comply with SBA proposed enforcement actions, including the requirement to file appeals in Federal Court as opposed to an administrative forum. SBA has concluded that a direct appeal to Federal district court will, on balance, be a more efficient and cost-effective process for lenders to utilize. For example, lenders would be able to seek immediate injunctive relief from the Federal district courts, whereas OHA does not have the authority to issue injunctive relief. The lender could lose valuable time and incur greater expense if it first had to pursue its appeal through OHA before it could seek injunctive relief from the Federal courts.

Other comments did not go directly to this revised information collection but are related to a degree. For instance, one commenter suggested that “SBA provide information on the steps that the [agency] had taken to establish information-sharing opportunities between SBA and the Federal Regulators, and an analysis of whether the cost burden on the lender, particularly the costs for onsite review could be reduced if such relationships were forged.” At this time SBA does not have any costs data regarding information sharing with Lenders. However, SBA is willing to pursue further dialogue with lenders and other interested parties on this issue and explore the viability of developing any of the suggestions.

The same commenter also commended SBA for the development and implementation of e-Tran -- the agency’s online application process but suggested that the SBA “vigorously pursue an expansion of this system, or the creation of a similar parallel system, that would provide for the automated collection of the information.” SBA updates its loan systems to the extent budgetary resources are available. The agency will consult with interested and affected third parties on any future expansions or modifications.

9. Payments of Gifts

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

No payments or gift to respondents is permissible for purposes of this collection.

10. Assurance of Confidentiality

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

The financial information required in this information collection describes the operating condition of each lender. Disclosure of the information could create a condition of competitive harm to entities with comparatively less resources or profitability. The information collected will be protected to the extent permitted by law, including the Freedom of Information Act.

11. Questions of a Sensitive Nature

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. This

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.

No personal financial information or information of a sensitive nature, as described in these instructions, is required.

12. Estimate of Hourly Burden of the Collection of Information

Provide estimates of the hour burden of the collection of information, as well as the hour cost burden. Indicate the number of respondents, frequency of response, annual hour and cost burden, and an explanation of how the burden was estimated.

This information collection will apply to the current group of 72 SBA Supervised Lenders (14 SBLCs and 58 NFRLs). While some of the information collections, like the annual and quarterly condition reports are required, most are ad hoc and occur on an exception basis. Our best estimate at this time is that these 72 Lenders will submit a total of 360 reports annually. With each lender taking an annual total of 116 hours to respond, the total burden hours for this expanded collection of information are estimated to be 8,352 hours.

SBA estimates an annual cost of \$10,340 per SBA Supervised Lender (or approximately \$744,480 for all SBA Supervised Lenders to comply with the information collection as revised. The \$10,340 cost per SBA Supervised Lender includes \$8,000 for the annual report, which includes the audited financial statements, (80 hours x \$100 per hour) plus \$2,340 for staff time to support the information collections (approximately 18 hours of CFO time @ \$100 per hour and 18 hours of staff time @ \$30 per hour). SBA believes that this number will be reduced to the extent that many or some of the SBLCs and NFRLs already maintain this information for other purposes.

CPA and CFO salary rates used were based on information published by the American Institute of Certified Public Accountants (AICPA) for CPA-credentialed individuals (external auditor or internal CFO) estimated at \$100. The salary rates for administrative professionals were based on information published by the International Association of Administrative Professionals. The hourly estimates are based on an informal survey of SBA Supervised Lenders.

13. Estimate of Total Annual Cost

Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. Do not include hour cost burden from above.

Other than outlined above, there are no additional costs resulting from the collection of information.

14. Estimated Annualized Cost to the Federal Government

Provide estimates of annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, including a 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

For SBLCs, the estimated cost to the Federal government for the additional information collected would be approximately 3 hours of financial analyst time for each SBLC at a rate of \$55 per hour. The total additional cost would be \$2,310 (3 hrs x 14 x \$55). In lieu of the existing baseline cost of \$6,160 (8 hrs per SBLC), the total cost would be \$8,470.

For NFRLs, the estimated annual cost of the Federal government would be approximately 11 hours of financial analyst time for each NFRL at a rate of \$55 per hour. Therefore, the estimated annual cost to the Federal government related to oversight of all 58 NFRLs would be 638 hours for \$35,090.

Internal SBA financial analyst time was estimated at GS-14 step 5 level of \$99,203 plus 24.8% benefits allocation, or approximately \$55 per hour.

15. Explanations of Program Changes in Items 13 or 14 on OMB 83-I

Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I

The increase of 7,232 in Item 13 on OMB 83-I and the \$624,480 increase in total cost from the current OMB approved collection is mainly attributable to the extension of the information collection to the 58 NFRLs (previously the respondent pool only consisted of 14 SBLCS) and the additional requirements of internal control, records maintenance, and adoption of a formal capital plan for the SBLCs.

However, as noted above, to the extent many or some of the NFRLs already maintain this information for other purposes, actual burdens information, once it becomes available, is likely to be lower than estimated.

16. Collection of Information whose Results will be Published

For collection of information whose results will be published, outline plans for tabulation and publication. Address complex analytical techniques... Provide time schedules for the entire project...

SBA does not intend to publish the results of this collection of information.

17. Expiration Date for Collection of this Date

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why the display would be inappropriate.

Not applicable, SBA has no plans to restrict display of an OMB approval date.

18. Exception to the Certification in Block 19 on OMB Form 83-I

Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I

Not applicable.

B. Collection of Information Employing Statistical Methods

Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used.

Not Applicable.