

OMB Clearance Form 3245-0185
SBA Form 1086 (Secondary Participation Guaranty Agreement & Form 1502 (Guaranty Loan Status and Lender Remittance))

Introduction

The SBA secondary market is an evolving \$3.9 billion dollar market designed to facilitate the availability of capital to lenders serving the small business community. When a lender sells the guaranteed portion of a SBA guaranteed loan, it is required to use SBA Form 1086 for the transaction. This form serves as the legal contract between the parties to the secondary market transaction. These parties include: the lender, the investor, SBA, and SBA's Fiscal and Transfer Agent (FTA). In signing the Form 1086, the lender agrees to collect and submit information on loan payments to SBA's FTA monthly, using SBA's Form 1502, Guaranty Loan Status and Lender Remittance Form, which is also part of this information collection as previously approved under Control No. 3245-0185.

This information collection is currently expired but as explained further in the accompanying letter, in order to facilitate immediate implementation of a recent change to the secondary market regulations, SBA is requesting emergency review and approval to reinstate the collection with one change. Specifically, SBA has amended the regulations for the 7(a) loan program to add an additional base rate option for lenders to use when pricing 7(a) loans. As a result, we have added fields to the form that allow lenders to define the Base Rate used as being either the Prime Rate, the LIBOR Rate permissible by SBA or the SBA Alternate Peg Rate. In addition, as a result of discussions with lenders and the FTA we have decreased the burden on Form 1086 from 3 hours to 1 hour per response.

Additional information collected includes, but is not limited to the following: the terms of the sale (for example; interest rate, fees, and price); lender's name and contact information; investor's name, contact, and taxpayer id information; borrower's name and contact information; SBA servicing office name and location; date lender executed SBA Form 750 (SBA's blanket lending agreement); loan information (note date, original loan amount, outstanding principal balance); date SBA guarantee fees paid; loan disbursement dates; date interest paid to; interest calculation method; fees; date of lender legend on note; and certain disclosures, some of which are required by statute (e.g. expected yield). This information has been previously approved and no changes have been made at this time.

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.

15 U.S.C. Section 634(f)(1) authorizes lenders to sell the guaranteed portion of SBA loans in accordance with SBA's regulations and procedures governing secondary market sales. SBA regulations codified at 13 CFR Sections 120.601, 120.613, 120.641, 120.642, 120.643, and

120.645 govern secondary market transactions, specifically authorizing the contract between secondary market participants (Form 1086- Secondary Participation Guaranty Agreement) and the Secondary Market Program Guide. These regulations and SBA's Secondary Market Program Guide require lenders selling loans into the secondary market to execute the Form 1086. The Form 1086 agreement is the critical document that delineates the legal rights and responsibilities of the transaction participants – the lender, the investor, SBA's Fiscal and Transfer Agent, and the SBA in the sale transaction. In signing the Form 1086, the lender agrees to collect and submit information on loan payments to SBA's FTA monthly. That information is collected on SBA's Form 1502.

2. **How, by whom, and for what purpose information will 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 information collected assists SBA in facilitating and administering the secondary market program in accordance with 15 U.S.C. Section 634(f)(3) and satisfying statutory certification and disclosure requirements provided in 15 U.S.C. Section 634(f)(1). In addition, under 15 U.S.C. Section 639(h), SBA is required to submit to Congress each March 31, a report of its secondary market operations. The information obtained through the 1086 provides much of the detail for the annual Congressionally mandated report. See Attachment 1 – Collection of Laws and Regulations. Lenders and investors use the information to analyze and evaluate the transaction. Finally, as the document sets forth many of the rights and responsibilities of the parties to the secondary market transaction, all parties use the form as legal guidance with respect to the rights and responsibilities of each party in the transaction. Ultimately the form may be used to enforce those rights and responsibilities.

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, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce the burden.

Subject forms are currently available to public in an electronic format on the website of SBA's fiscal and transfer agent in PDF format. The completed form can be submitted by electronic mail or by facsimile. SBA is working on developing plans to enhance its electronic submission capabilities.

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.

This is the only source available to document initial secondary market sales activities. The information collected is generally unique to the individual secondary market sale transaction.

SBA is working to develop electronic methods that would help the agency to identify and avoid the few, if any, areas in which information collected would be duplicative.

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.

Collected information generally does not impact small businesses or other small entities. The information is collected from lending institutions participating in the secondary market program. While the major portion of SBA secondary market sales volume accrues from large lenders, the Agency does have a number of small lenders that participate in the secondary market program. However, the burden was reduced to an absolute minimum for all businesses by only requesting the minimum amount of information that is necessary to comply with the Secondary Market provisions of 15 U.S.C. Section 634 et. seq. and 639 and to facilitate an efficient secondary market program.

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.

If SBA did not collect the information, SBA would not be administering and facilitating the program in accordance with 15 U.S.C. Section 634(f)(3) and could not report on the program annually as required by 15 U.S.C. Section 639(h). In addition, investors may not have sufficient information to make rational decisions to invest as investors rely on the information disclosed in the 1086. This would prevent the program from operating and meeting its objectives of providing liquidity to lenders and enabling lenders to further expand small business access to capital on reasonable terms and maturities to improve our nation's economy.

This collection of information, as it sets forth legal rights and responsibilities is the critical legal document that facilitates the secondary market sale of the SBA guaranteed portion of SBA loans. Failure to collect the information would result in unclear terms of the transaction, and likely litigation to establish the terms, rights, and responsibilities of the parties. There are no technical or legal obstacles to collecting the necessary information.

7. **Existence of special circumstances.**

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

Collection of information could not be conducted less frequently than one time per transfer transaction. Lenders submit the Form 1086 on a loan by loan basis. No other special circumstances exist to cause an information collection to be conducted in the manners referenced in question #7.

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), soliciting comments on the information collection prior to submission to OMB. 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), and on the data elements to be recorded, disclosed, or reported.

As part of this emergency request, SBA has also requested a waiver from the required 60-day comment notice. However, as a result of consultation with the SBA-appointed fiscal and transfer agent the Agency and analysis of recent fiscal year loan approval volume, SBA has made changes to the burden estimates for this collection. Original estimates of 14,000 annual responses for Form 1086 have been increased to 37,500. This revised amount represents an estimated 35-40% of all SBA loans approved annually being sold in the secondary market. Also, as noted above, as a result of consultations with the FTA and lenders we have decreased the amount of time it takes to respond to this form from 3 hours to 1.0 hour per response. This re-estimate reflects the repetitive nature of this data collection for lenders that regularly submit loans for sale through the secondary market.

9. **Payments or gifts.**

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

Neither payment nor gift will be provided to the respondents.

10. **Assurances of confidentiality.**

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

Any confidential or privileged information that is collected will be protected to the extent permitted by law, including but not limited to the Freedom of Information Act, 5 U.S.C. § 552 and the Right to Financial Privacy Act, 12 U.S.C. § 3401.

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, specific uses to be made of the information, explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

SBA collects the Registered Holder's tax identification number. SBA collects this information to determine compliance with IRS Notice backup withholding requirements. This collection of sensitive information has not been expanded beyond that which is currently collected under the current OMB approval number.

12. Estimate of the hourly burden of the collection of information.

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

The total estimated hour burden for this collection is 42,000, based on the following:

Form 1086

Estimated Number of Respondents	530
Estimated Number of Responses	37,500
Hours per Response	1 hour
Estimated Total Annual Burden Hours	37,500

Form 1502

Estimated Number of Respondents	530
Estimated Number of Responses	4,500
Hours per Response	1.0
Total Estimated Annual Burden	4,500

The estimates are based on informal consultation with SBA lenders and with the SBA fiscal and transfer agent.

Based on a loan officer’s annual salary of \$58,510 broken down to an hourly rate of \$28 per hour, the annual cost to respondents would be 42,000 hours x \$28 = \$1,176,000. The \$58,510 is based on statistics from the Department of Labor Occupational Outlook Handbook Earning Survey. See Attachment 3 – Labor Survey Excerpt for Financial Analysts in the “Securities and commodity contracts intermediation and brokerage” category. This figure could be slightly reduced with development of electronic submissions.

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.

There are minimal costs other than those outlined in #12 such as photo copying and postage.

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.

The cost to the Federal Government is approximately \$37,500.00. This assumes a cost for SBA of \$1.00 per response to provide and process the form.

15. Explanation of program changes in items 13 or 14 on OMB Form 83-I.

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

Burden estimates have changed since the submission due to increases in the number of responses, and re-estimations of burden time for completing the forms.

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.

In accordance with 15 U.S.C. Section 639(h), SBA is required to submit annually a report to Congress on SBA's secondary market loans. The statute details the information that SBA is to include in the report. A copy of this statutory provision is contained in Attachment 1 – Collection of Laws and Regulations. In addition to the annual report, SBA may publish summary data on an ad hoc basis (e.g., number of loans sold into the secondary market, average terms, etc.). However, data other than that allowed under FOIA (5 U.S.C. Section 552), the RFOIA of 1978 (12 U.S.C. Section 3401), and other applicable laws, will not be published.

17. **Expiration date for collection of this data.**

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.

OMB expiration date will be displayed.

18. **Exceptions 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.

In Section 19 of OMB Form 83-I, item I indicates the use of statistical survey methodology in the collection of information. Because each sale is unique to the underlying loan and its individual terms and because SBA must account for each sale, SBA cannot employ a statistical survey methodology to obtain the required information for the secondary market program.

B. Collections 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.

This collection does not employ statistical methods.