

**OMB Clearance for SBA Forms 1086/1502
(Secondary Participation Guaranty Agreement)
Control No: 3245-0185**

Introduction

The SBA secondary market is an established \$ 36.5 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.

The Form 1086 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 completing the 1086, the following information is collected: information on 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 principle 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). The data listing above consists of most of the information collected, but, it is not exhaustive. In signing the Form 1086, the lender agrees to, in the future, collect and submit information on loan payments to SBA's FTA monthly. That information is collected on SBA's Form 1502. The information collected on this form was previously approved along with the Form 1086 submission.

The collection of information is necessary to determine that the loan is being sold on the secondary market. Collection is also necessary to identify the lender that made and sold the loan and the investor who purchased the loan.

Summary of Significant Changes from Expired Version

The changes referred to in this filing center on the SBA Form 1086. The changes include greater enforcement language in the Lender Certification section, removal of the Warranty Period as previously provided in Section II, Paragraph 3, Registered Holder acknowledgement in Section I of the limitation by SBA of payment of not more than 120 days on defaulted loans it purchases as detailed in Section II, Paragraph 6(g), increased recognition of the FTA's responsibilities to the Lender and SBA as cited here in Section II, Paragraph 7(k) and in its contract with the SBA, and the time limitation imposed on lenders to purchase a defaulted loan as presented in Section II, Paragraph 10. .

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 establishes the law that governs 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. The information collected in the form assists SBA in facilitating and administering the secondary market program in accordance with 15 U.S.C. Section 634(f)(3) and satisfies statutory certification and disclosure requirements provided in 15 U.S.C. Section 634(f)(1). Finally, 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.

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.

SBA uses the information collected to facilitate and administer secondary market transactions in accordance with 15 U.S.C. Section 634(f)(3). SBA also uses the information to assist SBA in monitoring the program and in determining whether the program is meeting its objectives. In addition, SBA employs the information collected to comply with 15 U.S.C. Section 639(h) – annual reporting requirements to Congress. Lenders and investors use the information to analyze and evaluate the transaction. Finally, as the Form 1086 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.

The SBA Forms 1086 and 1502 are currently available to public in an electronic format on the website of SBA's fiscal and transfer agent (<http://www.colsonservices.com>). 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.

The SBA Form 1086 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.

The SBA Form 1502 captures the level of SBA activity associated lenders, and details the payment streams and program guarantee fees remitted by lenders in connection with their participation in the program.

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 Form 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. The collection of information through the submission of the Form 1502 provides SBA with monthly payment information on loans with an outstanding government guaranty. If SBA did not require this data collection, it would have no way to properly measure and manage the program risk attributed to the loans made by its lender participants

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.

Information contained on the Form 1502 is captured monthly in order for SBA to monitor and manage the aggregate financial risk of its 7(a) loan portfolio. If information was collected no more often than quarterly, SBA would have outdated and inadequate data to make program decisions.

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.

The 60 day notice and request for public comment was published in the Federal Register on March 4, 2009 at 74 FR 9465. See Attachment 2 – Federal Register Notice. No comments were received. When the Form 1086 was first developed, SBA originally estimated 14,000 annual responses; however upon further analysis of recent fiscal year loan approval volume and in consultation with the SBA-appointed fiscal and transfer agent (FTA), we have revised the number of responses to 37,500. This revised

amount represents an estimated 35-40% of all SBA loans approved annually being sold in the secondary market. Each sale includes the execution and delivery of a Form 1086.

The amount of time taken annually to complete the data collection from these forms remains at 42,500 hours. SBA estimates that completion of the Form 1086 takes no more than 1.0 hour per response. The additional 5,000 hours estimated in this data collection centers on an allotment of time for lenders to update the status of each loan disbursed in their SBA 7(a) loan portfolio through the monthly filing of the Form 1502.

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.

Data collected on the SBA Form 1502 includes small business borrower loan payments of principal and interest. Additional terms of the loan are also contained on the Form in order to measure the payment status of the loan held by the lender. This data collection is necessary in order for SBA to report on the credit risk placed upon the Agency as represented by the payments, or lack thereof reported by SBA lenders.

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 estimated hour burden is 37,500 based on the following:

Form 1086 Completion	
Estimated Number of Respondents	625
Frequency of Response: One time at initial sale	
Estimated Number of Responses	37,500
Hours per Response	1 hour
Total Annual Burden Hours	37,500

The estimated hour burden for the periodic update of loan payment information via the monthly submission of the Form 1502 is:

Form 1502 Completion	
Estimated Number of Respondents	625
Frequency of Response: Monthly	
Estimated Annual Burden Hours	5,000

The average annual burden of 1 hour per response for completion of the Form 1086 is determined by the amount of time necessary to read the form, insert the appropriate information, and sign the document.. An additional annual burden estimate of 5,000 hours is included to reflect monthly updates to the payment status of loans sold in a secondary market through the completion of the Form 1502. 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 42,500 hours x \$28 = \$1,190,000. 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 \$42,500. This assumes an annual cost for SBA of \$1.00 per response to provide and process the forms.

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 form.

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 RFPA 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.

19. 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.