

Supporting Statement for Requests for OMB Approval
Under the Paperwork Reduction Act and 5 C.F.R. § 1320
SBA Form 912, Statement of Personal History

A. Justification

1. Circumstances necessitating the collection of information. The Small Business Administration (SBA) requires an individual seeking assistance on behalf of a business to provide sufficient information for SBA to make a character or criminal history determination. In making guaranteed loans under Section 7(a), 15 U.S.C. § 636(a), SBA is specifically authorized to verify an individual's criminal history, or lack thereof, under section 7(a)(1)(B). 15 U.S.C. § 636(a)(1)(B). SBA is also authorized to make all investigations necessary to ensure that a person has not engaged in acts that violate, or will violate, the Act or the Small Business Investment Act. 15 U.S.C. §§ 634(b)(11), and 687b(a).

SBA has promulgated notice and comment regulations based upon the above authorities, identifying good character as an element of credit worthiness and eligibility for assistance from, or in participation with, SBA. The Agency makes this character determination based upon information developed from the responses given by applicants on SBA Form 912. The regulations for making character determinations are found in Title 13 of the Code of Federal Regulations at Sections 115.18(c) (Surety Bond Program), 120.110(n), 120.150(a) (Guaranteed Lending Program), and 124.203 (Section 8(a) Business Development Program). These regulations are further explained in SBA Standard Operating Procedures (SOP) SOP 50 10 5(D), Subpart B, Chapter 2, Paragraph III. D 3.n(4) (Guaranteed Lending Program), 50 45, Chapter 4(3)(a)(1) (Surety Bond Program), and 80 05 3, Chapter 2A(12) (Section 8(a) Business Development Program). SBA also uses Form 912 in its Disaster Loan Program. See, SOP 50 30 6, at Paragraph 74.

SBA is proposing to reduce the burden of responding to SBA Form 912, while ensuring the form collects information most pertinent to SBA's character determination duties, with four revisions.

Revision 1. SBA is correcting a typographical error in which the "an" was omitted from the instructions between items six and seven.

Revisions 2 through 4. In response to feedback from industry and individuals using SBA Form 912, SBA has elected to modify questions seven, eight and nine on the form to more accurately reflect criminal background information that is of greatest interest to the Agency when making a character determination. Question seven addresses whether a respondent is subject to unresolved criminal charges, while question eight will determine whether such charges are reasonably likely to occur in the near future. Finally, question

nine inquires about the resolution of all criminal charges in which the charge was not dismissed or the respondent was not fully vindicated. Generally, the revised questions will eliminate the need for a respondent to acknowledge a past arrest or criminal charges that did not result in continued criminal proceedings, while ensuring SBA is advised of any criminal charges or diverted criminal cases that are pertinent to the character determination.

2. How, by whom, and for what purpose the information will be used. SBA offices, including the OIG, use the information collected on SBA Form 912 in connection with character reviews of applicants for SBA financial assistance or other SBA program participation. When an applicant, or individual affiliated with a company applying for SBA assistance, indicates a criminal record that may affect program eligibility, the OIG requests the criminal history of the applicant from the Federal Bureau of Investigation (FBI). The FBI then conducts a check of its criminal history databases and advises SBA of any unfavorable information. In such cases, Block 10 of Form 912 functions as a waiver of rights under the Privacy Act, allowing SBA to obtain information from the FBI.

OIG includes a dollar total representing the aggregate amounts of payments avoided as a result of SBA's character determinations using the information collected with the Form 912 in its Semiannual Reports to Congress. These OIG reports are published on the OIG's website at:

<http://www.sba.gov/ig/onlinelibrary/Sarc/index.html>.

3. Technological collection techniques. The current version of the form is available for download through SBA's website at http://www.sba.gov/sites/default/files/tools_sbf_finasst912.pdf. SBA's online form is a fill-able PDF, which the respondent must print, sign and submit to the SBA. As SBA further modernizes its systems, the Agency will consider moving toward a fully electronic process.
4. Avoidance of duplication. With the exception of the Disaster Program, SBA programs identified in paragraph A.1 only duplicate a request for basic identification information in questions 1 through 4 and 6. The Disaster Program loan applications request screening information regarding past criminal involvement to determine whether a full Form 912 is required.
5. Impact on small businesses or other small entities. Form 912 is designed to minimize the burden on respondents:
 - a. It calls only for basic identification information and a "yes" or "no" response to no more than five questions.
 - b. It requests follow-up information only if the respondent answers "yes" to one or more of the three criminal history questions or "no" to the U.S. citizen question. Respondents only submit SBA Form 912 once.

- c. It consolidates functions, combining on one page the information gathering and the waiver of Privacy Act rights that would otherwise require a separate form.

Finally, the burden imposed by Form 912 is offset by the fact that completion is voluntary. Only respondents seeking a loan or other benefit from SBA need to complete it.

- 6. Consequences if collection of information is not conducted. Failing to collect the information requested on the Form 912 would increase SBA's risk of making loans and providing other benefits to dishonest persons and persons that are prohibited by law from receiving SBA assistance. SBA's use of Form 912 has been cited as a significant prevention measure by the President's Council on Integrity and Efficiency, now known as the Council of Inspectors General on Integrity and Efficiency. For the period from October 1, 2010, through March 31, 2011, the OIG reported that the use of this form resulted in over \$13.5 million worth of loans not being made due to adverse criminal background information. During the same period, SBA used information obtained through Form 912 to deny 14 applications for participation in the 8(a) Business Development Program due to past criminal activity.

Eliminating the form would cause both practical and legal problems. The FBI would not provide the criminal background information needed without a substitute waiver form. Even if this problem could be overcome in some manner, in the absence of an admission of a criminal history by applicants for SBA assistance, SBA would have to request criminal history information on borrowers and program participants. This alternative has been rejected in the past as impractical due to excessive burden, and as unduly intrusive into borrower privacy.

- 7. Existence of special circumstances. The form requests what is generally considered "confidential" information regarding an arrest record and criminal history. There are no other "special circumstances" of the sort mentioned in the Instructions for this questionnaire.
- 8. Solicitation of Public Comment. Aside from feedback from the regulated community referenced above, no outside consultations were deemed necessary or appropriate. SBA published a "Notice and request for comments" in the Federal Register on July 24, 2012, (77 Fed. Reg. 43410, 11) and received comments from one commenter. The commenter suggested that SBA either allow typed initials on Form 912, or clarify the instructions for the form so that applicants would know typed initials are unacceptable. The commenter further indicated that some applicants had difficulty remembering previous addresses and recommended deleting the Form 912 requirement that applicants disclose previous addresses.

SBA did not change the form in response to these comments. SBA changed Form 912 in 2010 to require initials because applicants were claiming that some lenders or other program participants pre-populated responses to questions 5, 7, 8 and 9, without consulting applicants. In fact, some applicants attempted to avoid prosecution for false statements on Form 912 by claiming the bank or some other intermediary filled out the Form 912 the applicant signed. SBA deemed initialing responses to questions 5, 7, 8 and 9 is necessary to ensure accurate responses for those crucial eligibility issues and imposes only a negligible burden on applicants.

SBA did not add additional instructions to Form 912 in response to the commenter's suggestion that SBA clarify the form. SBA rarely, if ever, receives Form 912s with typewritten rather than handwritten initials. Given SBA's experiences with the revised Form 912, instructions for initialing the document do not appear necessary.

Finally, SBA has elected to retain the requirement that applicants disclose the most recent previous address within the past ten years. Previous addresses allow SBA to cross-check information and assists with SBA's effective use of Form 912. While some applicants may have difficulty recalling this information, the ten year limitation provides a reasonable window within which an applicant should be able to recall one previous residence.

9. Payment or gifts. Respondents do not receive payments or gifts for providing information on Form 912. SBA uses the form, and other information, to determine eligibility for program participation.
10. Assurances of confidentiality. The standard protections of the Privacy Act of 1974 apply to the use of the information obtained, but SBA offers respondents no other specific assurances of confidentiality.
11. Questions of a sensitive nature. SBA Form 912 includes several personal identifiers such as social security number, name, date of birth and place of birth. This collection of information contains questions of a sensitive or confidential nature, specifically, information about criminal history. The form explains that disclosure of an individual's social security number is voluntary. The other personal identifiers are required for a benefit, e.g., a loan. As indicated in the answer to question A.1, the information is needed to make sound decisions about the character of borrowers. Without such information, the Government may guaranty loans to, or do business with, dishonest or ineligible parties. Privacy Act protections cover the information provided. Only SBA personnel with a need to know, i.e., those involved in the decision-making process are provided access to the information. SBA has instituted procedures to protect confidentiality to the extent permitted by law. Only summary, aggregate data, not individual information, are provided in public reports. When this information indicates a violation or potential violation of

law, whether civil, criminal, or administrative in nature, SBA may refer it to the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. See 74 Fed. Reg. 14890 (April 1, 2009) for other published routine uses.

12. Estimate of the hourly burden of the collection of information. Although SBA believes the revision to Form 912 will reduce the number of responses from the regulated community and the number of Form 912s processed by SBA OIG, the Agency is retaining its figures from previous Paperwork Reduction Act submissions as a conservative burden estimate. Applicants for SBA loans or other assistance have completed approximately 142,000 SBA Forms 912 annually during each of the past six fiscal years. In Fiscal Year 2011, SBA had 53,706 7(a) loan approvals. During that Fiscal Year, SBA processed 242 Form 912s in the Disaster Program and 21 in the Surety Bond Program. Given the reported number of transactions, we believe 142,000 SBA Forms 912 to be a reasonable estimate of annual reports. Form 912 takes approximately 15 minutes to complete, even with the proposed minor modifications. Respondents with an arrest record will save time, but we do not have a basis for quantifying the time saved. The form is normally submitted only once by each applicant for loan assistance or program participation. Therefore, we estimate that the burden imposed on the public by use of SBA Form 912 is 35,500 hours per year. (142,000 responses x ¼ hour = 35,500 hours.)

SBA estimates that the average salary of the respondent providing this information is equivalent to a GS-11 loan officer's salary, at an hourly rate of \$29.22. SBA has previously used the \$26 hourly cost burden for SBA Forms 4, 4-I and 4-Schedule A, but is adjusting that estimate in this submission for inflation and an increase in the hourly pay rate on the General Schedule. The respondent populations for those forms are similar to the respondent population for SBA Form 912. We believe, therefore, that the \$29.22 hourly cost rate is reasonable for the SBA Form 912. The cost to the average respondent for completing this form is estimated at \$7.31 ($\$29.22 \div \frac{1}{4} \text{ hour} = \7.31). The annual cost to all respondents would be 35,500 hours at \$29.22 per hour = \$1,037,310.

This cost should be considered in the context that the only citizens asked to complete the form are those seeking some type of benefit from SBA. As noted above, the use of this form in the first six months of FY 2011 alone allowed the Government to avoid making \$13.6 million in loans to ineligible applicants.

13. Estimate of total annual cost burden to respondents or record keepers from collection of information. There is no additional cost to respondents.

14. Estimated annualized cost to the Federal government. In FY 2010, SBA spent \$61,026.00 for the cost of FBI background investigations. We believe, however that FY 2009 numbers will be more reliable for estimating future costs given the increase in loan activity due to Congressional action present in 2010. In FY 2009, SBA spent \$46,758.50 on FBI Costs associated with roughly 2,500 name checks. Form SBA 912 takes approximately 30 minutes to process and is reviewed by an agency employee with an average grade of GS-10. We estimate handling roughly 2,500 name checks in the upcoming year. The estimated annualized cost to the Federal Government is, therefore, \$80,008.50 (\$46,758.50 payable to the FBI plus \$33,250 (calculated by GS-10 hourly rate of \$26.60 X 1250 hours) in employee salary costs.
15. Explanation of program changes or adjustments in Items 13 or 14 on OMB Form 83-I. The estimates for items 13 and 14 on Form 83-I are consistent with SBA's prior submission.
16. Collection of information whose results will be published. The number and dollar amount of assistance declined for reasons related to character are reported in the SBA OIG Semiannual Reports to Congress. The reports are published to cover the periods October 1 through March 31 and April 1 through September 30 of each fiscal year. Additionally, the aggregate data is reported by OIG in its GPRA Annual Performance Plan results. The data included in these reports are tabulated and maintained by the OIG Investigations Division.
17. Expiration date for collection of information. Not Applicable.
18. Exceptions to certifications in Block 19 on OMB Form 83-I. Not Applicable.

B. Collection of Information Employing Statistical Methods

This collection of information does not employ statistical methods.