

Supporting Statement
U.S. Small Business Administration
Paperwork Reduction Act Submission
Fee Disclosure and Compensation Agreement
(
(OMB Control # 3245-0201)

SBA is requesting approval of this information collection with minor revisions to Form 159 and Form 159D, as described below.

Summary of Changes:

SBA Form 159

- Revised instructions to (i) clarify that a separate Form 159 must be completed for each application when an Agent provides services to an Applicant in connection with multiple applications; and (ii) explain the new procedure for submitting completed forms and supporting documentation, which now require SBA Lenders to submit the requested information through the Capital Access Financial System (CAFS) at closing or by the initial loan disbursement with the lender's Form 1502 report.
- Revised section regarding itemization and supporting documentation to require a detailed explanation of work performed; disclosure of whether compensation was paid on an hourly rate or a percentage of the loan amount, and if the former, the amount of that hourly rate, and the number of hours spent working on each service performed.
- Removed references to Fiscal Transfer Agent (FTA) Form159@colsonservices.com.
- Increased time to complete the form from 5 minutes to 20 minutes as additional supporting information is required at the time of submission.

SBA Form 159D

Revised the Privacy Act System of Record section to remove routine uses not applicable to the information collected in connection with this form. .

A. Justification

1. Explain the circumstances that make the collection of information necessary.

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.

SBA Form 159

Section 13 of the Small Business Act (15 U.S.C. 642) requires that no loan be made or equipment, facilities, or services furnished by the Administration under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort and the fees paid or to be paid to any such persons.

The implementing regulations for this statutory requirement are provided in 13 CFR Part 103 and 13 CFR §§ 120.221 and 120.222. Agents (as defined in 13 CFR § 103.1) are required by 13

CFR § 103.5 to execute and provide to SBA a compensation agreement showing the compensation charged for services rendered or to be rendered to the Applicant or SBA Lender in any matter involving SBA assistance. SOP 50 10 further clarifies when compensation agreements are required and who should execute the document.

SBA Form 159D

Section 13 of the Small Business Act and 13 CFR 103.5 also govern the requirement for any agent or packager to execute and provide to SBA a compensation agreement in connection with a disaster loan. SOP 50 30 further clarifies that a compensation agreement is only required when compensation exceeds certain amounts: \$500 for home disaster loans and \$2,500 for business disaster loans.

2. How, by whom, and for what purpose will the 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.

This information collection is used by the 7(a), 504, and ODA loan programs to collect information about Agents, the services they provide, compensation rendered, and who paid the compensation. The information is instrumental to the integrity of the applicable SBA lending programs and is used to monitor the fees charged by Agents and the relationships between Agents and SBA Lenders. The information helps SBA determine, among other things, if Applicants are paying unnecessary, unreasonable, and/or prohibited fees.

SBA Form 159

SBA Form 159 is used by SBA Lenders and loan Applicants to disclose the name of any Agent involved in an application for SBA financial assistance and the fees paid or to be paid to the Agent(s). The form captures information about the Agent, the services provided, the fees paid, and if the fees were paid by the Applicant or SBA Lender.

The form may be completed at any point during the origination process with submission requirements outlined in the applicable SOP. For 7(a) loans, the 7(a) Lender should submit the completed form at loan closing or no later than the initial disbursement on the loan in conjunction with a Lender's 1502 monthly report within two such reporting cycles, using the CAFS. For 504 loans, the CDC should submit the completed form within 30 calendars of the debenture funding, using within CAFS. All Lenders are required to retain the original document in the loan file.

In addition, as part of lender oversight activities, the SBA uses the information collected to ensure SBA Lenders are originating loans meeting SBA Loan Program Requirements as it pertains to Applicant fees.

SBA Form 159D

SBA Form 159D collects information from Applicants and Agents that is used by SBA to establish that there is no appearance of unlawful or unethical activity by Agents who receive compensation in exchange for representing Applicants for an SBA Disaster loan.

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.

SBA Form 159

This form is available through <https://caweb.sba.gov/>. SBA Lenders will also be able to generate the form through various third-party software platforms; The 7(a) Lenders may generate the form through CAFS. SBA Lenders will access, complete, and submit an executed copy electronically via CAFS.

SBA Form 159D

This form is available on the SBA website as a PDF (fillable form) (<https://www.sba.gov/sites/document>).

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.

SBA Form 159

The information collected is unique to each application; therefore, any information previously submitted would be of little value in assessing the compensation on a given loan.

SBA Form 159D

In the SBA Disaster loan program some similar, but not identical, information is collected on SBA Form 5, Disaster Business Loan Application, and SBA Form 5c, Disaster Home Loan Application. Specifically, those forms collect the Agent's name, address, telephone number, and the compensation amount; whereas the purpose of Form 159(D) is to collect detailed information about the services provided, the length of time it took to provide that service, and the amount the Agent charged for any such service. The information allows SBA to determine whether the compensation amount paid to the Agent is reasonable under the circumstances and is not available elsewhere. The duplicative information is minimally burdensome and facilitates SBA's correlation of Form 159(D) with the correct loan applicant.

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.

SBA Form 159

Respondents include Lenders (some of which may be small), small business loan applicants, and Agents (who would also qualify as small). However, since the information collected is minimal and readily available, this information collection does not impose a significant economic burden on the less than 6,000 respondents annually. . As the revised SBA Form 159 was drafted, the Agency made a concerted effort to ensure the form was more user-friendly to further ease any burden on respondents without sacrificing its usefulness to the agency.

SBA Form 159D

Some of the respondents may be small businesses; however, the impact on such small businesses is minimal. Not all applicants hire Agents, and SBA only requires completion of this form when an Agent is receiving compensation from the Applicant over certain allowable thresholds—generally \$500 for home disaster loans and \$2,500 for business disaster loans.

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.

SBA Form 159

This collection of the information allows the Agency to provide small businesses access to capital in an efficient and timely manner while complying with its statutory and regulatory authorities. Failure to collect the information would result in SBA's non-compliance with the statutory requirement that it collect information from recipients of financial assistance about compensation paid to Agents and would hinder the Agency's ability to properly monitor the fees being charged in connection with SBA-guaranteed loans. Also, SBA would not be able to properly perform its lender oversight responsibilities and ensure its lending partners are complying with SBA Loan Program Requirements concerning permissible fees.

SBA Form 159D

Failure to collect the Form 159D information would hinder the Agency's ability to properly monitor the fees being charged in connection with SBA disaster loans. In addition, if not completed, the Applicant risks being charged unreasonable fees.

7. Existence of special circumstances

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

There are no special circumstances.

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.

SBA published notice of this information collection in the Federal Register on April 19, 2021, at 86 FR 20430. The comment period ended on June 18, 2021; no comments were received.

9. Payments or gifts.

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

No gifts or payments are provided to any 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.

The information provided will be protected to the extent permitted by law, including the Privacy Act, 5 U.S.C. § 552a, and the Freedom of Information Act, 5 U.S.C. § 552.

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.

Not applicable.

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

SBA Form 159

SBA Form 159 is only required when fees are paid in connection with an application for SBA financial assistance. In some instances, more than one form may be required, as a separate form is required for each Agent who performed services and will be paid in connection with the application.

The estimated number of Forms 159 submitted annually is based on the actual number of forms submitted in both the 7(a) and 504 loan programs from FY 2018 to 2021. For the 7(a) program, the average is 5,298 (4,234 + 6,333 + 5,326 = 15,893 / 3, and for the 504 program, the average is 351 (454 + 343 + 257 = 1,054 / 3). The total estimated annual submissions based on these averages is 5,649. In addition, SBA estimates that it takes a total of 20 minutes to review, complete and submit the form.

Estimated cost is determined by taking the salary for a GS-12, Step 1 Federal employee’s (based on the 2021 General Schedule (Base)) annual salary of \$66,829 or \$32/ hour (rounded to the nearest whole dollar). The GS-12 pay grade is utilized in preparing this estimate as it is equivalent to the position normally held by a white-collar employee in a mid-level position.

A	Estimated number of Form 159 submitted annually)	5,649
<i>Estimated Burden Hours</i>		
B	Number of minutes to complete form	20
C	Total number of minutes to complete form (annually)	112,980
D	Converted to hours	C/60 minutes
E	GS-12, Step 1 loan officer’s hourly rate	\$ 32

F	Annual cost to respondents – Form 159	D x E	\$ 60,256
---	---------------------------------------	-------	-----------

SBA Form 159D

This form is only required if the fee paid to each agent exceeds \$500 for a disaster home loan and \$2,500 for a disaster business loan. It is estimated that only 1% of disaster loans approved annually require the use by the applicant of an agent or loan packager. The average number of disaster loans approved annually over the last five years is 50,757. Therefore, the estimated number of submissions of Form 159D is 508.

The hourly rate for completion of the Form 159D is estimated as comparable to a Federal employee’s salary at the GS-12, Step 1 pay grade based on the 2021 General Schedule (Base) and rounded to the nearest dollar.

A	Estimated number of Form 159D submitted annually)		508
<i>Estimated Burden Hours</i>			
B	Number of minutes to complete form		5
C	Total number of minutes to complete form (annually)		2,540
D	Converted to hours	C/60 minutes	42
E	GS-12, Step 1 loan officer’s hourly rate		\$ 32
F	Annual cost to respondents – Form 159(D)	D x E	\$ 1,344

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 is no appreciable cost burden other than as reported in number 12 above to respond to this collection of information. Lenders and CDCs are required to maintain the original Form 159 in the loan file and submit a copy of the completed, printed, signed, and scanned document electronically post-closing to SBA. The Lenders upload other documents post-closing; therefore, this is not considered a materially cost. The Form 159D is retained by SBA.

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.

SBA Form 159

The Form 159 is reviewed by analysts or contractors in SBA’s Office of Credit Risk Management. The average salary of the analysts reviewing the forms is at the GS-13, Step 1 pay grade (\$79,468) based on the 2021 General Schedule (Base) or \$38/ hour (rounded to the nearest whole dollar). There is no special equipment or overhead costs required to perform the review of

Form 159. On average, the review of a Form 159 takes 30 minutes. Therefore, the estimated annualized cost to the federal government for Form 159 is: $(5,649 \times 30) : 60 = 2,825$ hours. $2,825 \times \$38/\text{hour} = \$107,350$.

A	Estimated number of Responses (Form 159))	5,649
<i>Estimated Burden Hours</i>		
B	Number of minutes to review form	30
C	Total number of minutes to review form (annually)	169,470
D	Converted to hours	C/60 minutes
		2,825
Estimated hour cost burden		
E	GS-13, Step 1 analyst's hourly rate	\$ 38
F	Annual cost to federal government – Form 159	D x E
		\$ 107,350

SBA Form 159D

Generally, the fee, if any, is below the threshold requiring the SBA Form 159D. In cases where the form is completed, it takes approximately 30 minutes to review. It is assumed that the average salary of the SBA analysts reviewing the forms is at the GS-12, Step 1 pay grade based on the 2021 General Schedule (Base) and rounded to the nearest dollar. There is no special equipment or overhead costs required to perform the review of Form 159D. Therefore, the estimated annualized cost to the federal government for Form 159D is \$8,128.

A	Estimated number of responses (Form 159D)	508
<i>Estimated Burden Hours</i>		
B	Number of minutes to review form	30
C	Total number of minutes to review form (annually)	15,240
D	Converted to hours	C/60 minutes
		254
Estimated hour cost burden		
E	GS-12, Step 1 analyst's hourly rate	\$ 32
F	Annual cost to federal government – Form 159D	D x E
		\$ 8,128

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.

The estimated overall burden hours and number of responses for this collection has decreased. This is due primarily due to the significant decrease in the total number of responses for SBA Form 159s from SBA's last PRA submission, which can be attributed to the fact that , the Paycheck Protection Program (PPP) as authorized by 7(a)(36) and (37), and related initiatives implemented by SBA in response to the COVID-19 pandemic did not require this form since no fees could be charged to the applicant under PPP as mandated by statute.

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.

Except for summary data that may be included in various Agency reports this information 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.

This is not applicable; expiration date will be published.

18. Exceptions to the certification on 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.

There are no exceptions.

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 is not applicable.