



November 23, 2020

Mr. Curtis Rich
Agency Clearance Officer
US Small Business Administration
Washington, DC

On behalf of America's SBDC, the association representing the 62 networks and over 975 centers that will be using the 641 "Request for Counseling" form, we would like to offer some comments and concerns. We offer these comments on behalf of the many small businesses that will be seeking SBDC assistance.

Our first concern is the fact that current, and prospective SBDC clients are already afforded privacy under the provisions of section 21(a)(7) of the Small Business Act. Yet the form makes no mention of that existing protection, a significant failing. This requires SBDC advisers to essentially train clients in the use of the intake form. An intake form/request for counseling should be a clear and, simple document.

In its current format in section 11 this form is unclear. Again, why doesn't the form mention that, by law, SBDCs must protect client privacy? Entrepreneurs should be informed of that BEFORE checking any box that gives away their privacy. This omission requires SBDC advisers to tell clients of their rights, and in an electronic format that is particularly difficult.

The current text in section 11 is misleading. The current phrasing can easily lead a prospective client to believe that his/her consent is a prerequisite to the provision of counseling services. Section 11 should be redrafted to make clear that prospective clients –

- 1). Have a pre-existing right to privacy.
- 2). Need not provide personal contact information to SBA in order to receive counseling.

Section 11 is also particularly confusing in that the client is, in fact, agreeing to multiple items in a single "yes or no" question. Are they agreeing to surveys, or are they agreeing to be solicited for services? It would be clearer, and fairer to the prospective client, to ask separate questions. We strongly urge that the request for information for surveys be segregated from any other use of information for SBA contact. Section 11 should be redrafted to make clear that prospective clients –

- 1). Agree, or disagree, with being contacted for survey purposes.
- 2). Agree, or disagree, with being contacted by SBA or its agents.

It is especially disturbing that SBA includes solicitation of services in this information request. What purpose is served by soliciting a small business for other services? How is that an appropriate information collection? Furthermore, who are SBA's agents? This section must provide a transparent understanding what contact is being sought. It would be preferable if the information collection did not allow for dissemination beyond the SBDCs.

We also note that SBA, in section 11, is asking for this information to “*meet Congressional and Executive Branch reporting requirements*”. That is incorrect. Congress has never, at any point, requested client contact information. The fact that the Small Business Act specifically prohibits SBDCs from sharing that information clearly shows that Congress neither wants nor needs such information. It further shows that Congress does not wish SBA to have such information, beyond certain specific circumstances.

As to Executive Branch need for such information, we return to the statute. If Congress wanted the Executive Branch to have such information it would not have expressly forbidden the sharing of such information beyond certain circumstances. SBA would be better served by drafting regulations regarding the privacy protections in Sec. 21(a)(7). It has been 15 years and SBA has yet to offer any guidance on this provision. It is also fair to point out that a prospective client’s email and other contact information are in no way valid performance metrics.

We must also express concerns over the protection of client information. How will SBA protect their information to the extent permitted by law? Under the Small Business Act, the SBDC is prohibited from sharing my information at all. It would be simpler to not collect that information, as set forth in the law. Also, the information collection requires a small business to “*waive all claims*”. Against whom? Why is this provision necessary, and who does it protect?

Finally, the justification for this form (641) says SBA will comply with the E-Government Act. Where and how does that statute abrogate the Small Business Act and its provisions? Has SBA conducted a Privacy Impact Assessment? If not, why not? If so, why isn’t that mentioned, and how did it deal with the privacy requirements of the Small Business Act?

In summation, SBA can and must make it form clearer. It should clearly state what privacy protections a prospective client/small business already has. It should clearly state and offer choices for each proposed use of personal information and explain each such use. SBA should state unequivocally each statute or regulation requiring the collection of such information. SBA should also explain fully how such information is vital to the oversight function alleged. The current prevalence of cyber-crime requires less distribution of such information, not more. SBA should be requesting as little information as necessary.

A handwritten signature in black ink, appearing to read "C. Edward Rowe III". The signature is fluid and cursive, with a stylized "R" and "III" at the end.

C. Edward Rowe III
President/CEO
America’s SBDC