

impact on a substantial number of small entities.

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581-0099.

After consideration of all relevant matters presented, it is hereby found that the issuance of this rule will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

#### **PART 999—SPECIALTY CROPS; IMPORT REGULATIONS**

Accordingly, the interim final rule amending 7 CFR Part 999 which was published at 60 FR 57910 on November 24, 1995, is adopted as a final rule without change.

Dated: January 22, 1996.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 96-1296 Filed 1-25-96; 8:45 am]  
BILLING CODE 3410-02-P

### **SMALL BUSINESS ADMINISTRATION**

#### **13 CFR Parts 101, 133, and 135**

#### **Administration, Index to Approved SBA Reporting and Recordkeeping Requirements, and Intergovernmental Review of Small Business Administration Programs and Activities**

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** In response to President Clinton's government-wide regulatory reform directive, the Small Business Administration completed a page-by-page and line-by-line review of all of its existing regulations. As a result, SBA now clarifies and streamlines its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This rule reorganizes all of present Parts 101, 133, and 135 and consolidates them into one new rule. As part of this streamlining process large portions of present Part 101 have been removed from the regulations and will be published in the

Federal Register. Present Parts 133 and 135 are revised, updated and consolidated with Part 101. Finally, the remaining sections are rewritten into a straightforward "plain English" style of writing.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cheri C. Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205-6643.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a Memorandum to Federal agencies directing them to simplify their regulations and eliminate those that are unnecessary. In response to this directive SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. This rule revises, amends, reorganizes, and consolidates all of present 13 CFR Parts 101, 133, and 135. This new consolidated rule reorganizes Part 101 into four subparts and renumbers all remaining sections to reflect this new configuration.

Proposed changes to Parts 101, 133, and 135 were published in the Federal Register on November 24, 1995 (60 FR 57965). The public was invited to comment during a thirty day comment period. SBA received no comments concerning this part during that time period. Therefore, the following final rule contains no changes to the proposed rule, except minor typographical ones.

For a detailed description of the changes to each subpart and the new organization of Part 101, please refer to SBA's proposed rules, published at 60 FR 57965 (November 24, 1995).

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. 35)

SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule consolidates three Parts of SBA's current regulations, moves substantial amounts of general organizational information from SBA's regulations to other sources, and rewrites the remaining provisions into plain English. Contracting opportunities and financial assistance for small business will not be affected by this rule. Therefore, it is not likely to have an annual economic effect of \$100 million or more, result in a

major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule will not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

#### List of Subjects

##### *13 CFR Part 101*

Administrative practice and procedure; Authority delegations (Government agencies); Investigations; Organization and functions (Government agencies); Reporting and recordkeeping requirements.

##### *13 CFR Part 133*

Reporting and recordkeeping requirements.

##### *13 CFR Part 135*

Intergovernmental relations.

For the reasons set forth above, and under the authority of 15 U.S.C. 634(b)(6), SBA hereby amends 13 CFR Chapter I as follows:

1. Part 101 is revised to read as follows:

#### **PART 101—ADMINISTRATION**

##### **Subpart A—Overview**

- 101.100 What is the purpose of SBA?
- 101.101 Who manages SBA?
- 101.102 Where is SBA's Headquarters located?
- 101.103 Where are SBA's field offices located?
- 101.104 What are the functions of SBA's field offices?
- 101.105 Who may use SBA's official seal and for what purposes?
- 101.106 Does Federal law apply to SBA programs and activities?
- 101.107 What SBA forms are authorized for public use?
- 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?
- 101.109 Do SBA regulations include the section headings?

##### **Subpart B—Employment of Private Counsel**

- 101.200 When does SBA hire private counsel?
- 101.201 What are the minimum terms of private counsel's employment?

**Subpart C—Inspector General**

- 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?
- 101.301 Who should receive information or allegations of waste, fraud, and abuse?
- 101.302 What is the scope of the Inspector General's authority?
- 101.303 How are Inspector General subpoenas served?

**Subpart D—Intergovernmental Partnership**

- 101.400 What is the purpose of this subpart?
- 101.401 What programs and activities of SBA are subject to this subpart?
- 101.402 What procedures apply to the selection of SBA programs and activities?
- 101.403 What are the notice and comment procedures?
- 101.404 How does the Administrator receive comments?
- 101.405 How does the Administrator respond to comments?
- 101.406 What are the Administrator's responsibilities in interstate situations?
- 101.407 May the Administrator waive these regulations?

Authority: 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

**Subpart A—Overview****§ 101.100 What is the purpose of SBA?**

The U.S. Small Business Administration (SBA) aids, counsels, assists, and protects the interests of small business concerns, and advocates on their behalf within the Government. It also helps victims of disasters. It provides financial assistance, contractual assistance, and business development assistance. For a more detailed description of the functions of SBA see The United States Government Manual, a special publication of the Federal Register, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

**§ 101.101 Who manages SBA?**

(a) An Administrator, appointed by the President with the advice and consent of the Senate, manages SBA. The Administrator—

- (1) Is responsible to the President and Congress for exercising direction, authority, and control over SBA.
- (2) Determines and approves all policies covering SBA's programs to aid, counsel, assist, and protect the interests of the nation's small businesses.
- (3) Employs or appoints employees necessary to implement the Small Business Act, as amended, the Small

Business Investment Act, as amended, and other laws and directives.

(4) Delegates certain activities, by issuing regulations or otherwise, to Headquarters and field positions.

(b) A Deputy Administrator, appointed by the President with the advice and consent of the Senate, serves as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

**§ 101.102 Where is SBA's Headquarters located?**

The Headquarters of SBA is at 409 3rd Street, S.W., Washington, D.C. 20416.

**§ 101.103 Where are SBA field offices located?**

A list of SBA's field offices with addresses, phone numbers and jurisdictions served is periodically published in the Federal Register. You can also obtain the address and phone number of an SBA office to serve you by calling 1-800-8-ASK-SBA or 1-800-827-5722.

**§ 101.104 What are the functions of SBA field offices?**

(a) *Regional offices.* Regional offices are managed by a Regional Administrator who is responsible to the Administrator and to the Associate Administrator for Field Operations. They are located in major cities and have geographical boundaries which cover multi-state areas. Regional offices exercise limited authority over field activities within their region.

(b) *District offices.* District offices are managed by a District Director and are located in cities within a region. District offices are responsible to Headquarters, the Associate Administrator for Field Operations, and to a regional office. Within their delegated authority, district offices have authority for—

- (1) Conducting all program delivery activities within the district boundaries;
- (2) Supervising all branch offices located within the district boundaries; and
- (3) Providing subordinate branch offices with the technical capability necessary to execute assigned programs.

(c) *Branch offices.* Branch offices are managed by a Branch Manager and are located in cities within a district. Branch offices are responsible to the district office within whose boundaries it is located. Branch offices execute one or more elements of the business or disaster loan programs and have limited authority for program execution.

(d) *Disaster area offices.* Disaster area offices are managed by Area Directors and are located in cities within defined

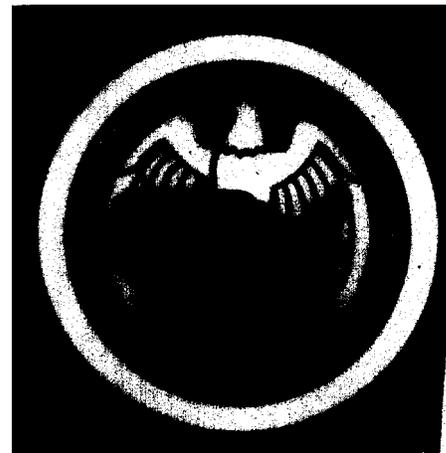
geographical areas. Disaster area offices are responsible to Headquarters and provide loan services to victims of declared disasters. Temporary disaster offices are often established in areas where disasters have occurred.

(e) *Responsibilities.* Each field office has responsibilities within a defined geographical area as periodically set forth in the Federal Register.

**§ 101.105 Who may use SBA's official seal and for what purposes?**

(a) The SBA's seal shall be in a manner and form set forth as follows:

BILLING CODE 8025-01-P



BILLING CODE 8025-01-C

(b) The Administrator, Deputy Administrator, General Counsel, Assistant Administrator for Administration, Assistant Administrator for Hearings and Appeals, Associate Administrator for Minority Enterprise Development, Regional Administrators, District Directors, Branch Managers, the Inspector General, and Disaster Area Directors are authorized to—

- (1) Certify and authenticate originals and copies of any books, records, papers, or other documents on file within SBA, or extracts taken from them.
- (2) Certify the nonexistence of records.
- (3) Affix the Seal of SBA to all such certifications for those purposes authorized by 28 U.S.C. 1733.

**§ 101.106 Does Federal law apply to SBA programs and activities?**

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

- (1) Instruments evidencing loans;
- (2) Security interests in real or personal property payable to or held by SBA or the Administrator such as

promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

**§ 101.107 What SBA forms are approved for public use?**

(a) SBA uses forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or when providing services for SBA, from any field office (see § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every respect to the forms approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and see 5 CFR 1320.6) should notify SBA. Direct such comments to the Assistant Administrator for Administration at 409 3rd Street, S.W., Washington, DC 20416.

**§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?**

Yes. Despite these exemptions, SBA will follow the public participation requirements of the Administrative Procedure Act, 5 U.S.C. 553, in rulemakings relating to public property, loans, grants, benefits, or contracts.

**§ 101.109 Do SBA regulations include the section headings?**

Yes. All SBA regulations must be interpreted as including the section headings.

**Subpart B—Employment of Private Counsel**

**§ 101.200 When does SBA hire private counsel?**

(a) *Business loans.* SBA may hire private counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster loans.* SBA may hire private counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

**§ 101.201 What are the minimum terms of private counsel's employment?**

(a) Private counsel must perform all requested work in compliance with SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Private counsel must adhere to the highest standards of professional conduct and maintain confidentiality appropriate to the attorney-client relationship.

(c) Private counsel acts under the supervision of the SBA General Counsel (and designees).

(d) Private counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

**Subpart C—Inspector General**

**§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?**

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

**§ 101.301 Who should receive information or allegations of waste, fraud and abuse?**

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

**§ 101.302 What is the scope of the Inspector General's authority?**

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;

(c) Administer oaths and affirmations or take affidavits; and

(d) Request information or assistance from any Federal, state, or local government agency or unit.

**§ 101.303 How are Inspector General subpoenas served?**

(a) Service of subpoenas may be effected by any of the following means—

(1) If by mail, a copy of the subpoena must be addressed to the person, partnership, corporation, or unincorporated association to be served at a residence or usual dwelling place, or a principal office or place of business, and mailed first class by registered or certified mail (postage prepaid, return receipt requested), or by a commercial or U.S. Postal Service overnight or express delivery service.

(2) If by personal delivery, a copy of the subpoena must be delivered to the person to be served, or to a member of the partnership to be served, or to an executive officer or a director of the corporation or unincorporated association to be served, or to a person authorized by appointment or by law to receive process for the person or entity named in the subpoena.

(3) If by delivery to an address, a copy of the subpoena must be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association to be served, or at the residence or usual dwelling place of the person, member of the partnership, or officer or director of the corporation or unincorporated association to be served, with someone of suitable age and discretion.

(b) Proof of service—

(1) When service is by registered, certified, overnight, or express mail, it is complete upon delivery of the document by the Postal Service or commercial service.

(2) The return Postal Service receipt for a document that was registered or certified and mailed, the signed receipt for a document delivered by an overnight or express delivery service, or the Return of Service completed by the individual serving the subpoena by personal delivery shall be proof of service.

## Subpart D—Intergovernmental Partnership

### § 101.400 What is the purpose of this subpart?

(a) This subpart implements section 401 of the Intergovernmental Cooperation Act (31 U.S.C. 6506 *et seq.*) which promotes intergovernmental partnership and strengthens Federalism by relying on state processes and state, area-wide, regional, and local coordination for the review of proposed Federal financial assistance and direct Federal development.

(b) While guiding SBA's management, this subpart does not create any right or benefit enforceable at law.

### § 101.401 What programs and activities of SBA are subject to this subpart?

SBA publishes in the Federal Register a list of programs and activities subject to this subpart.

### § 101.402 What procedures apply to the selection of SBA programs and activities?

(a) A state may—

(1) Select any program or activity published in the Federal Register under § 101.401 for intergovernmental review (providing it consults with local elected officials before doing so) and then notify the Administrator of the programs and activities selected; and

(2) Notify the Administrator of changes in its selections at any time. For each change, the state submits to the Administrator an assurance that it consulted with local elected officials regarding the change.

(b) SBA may establish deadlines by which states must inform the Administrator of changes in their program selections.

(c) After receiving notice of a state's selections, the Administrator uses a state's process as soon as feasible depending on individual programs and activities.

(d) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 101.403 What are the notice and comment procedures?

(a) The Administrator provides notice to directly affected state, area-wide, regional, and local entities in a state of proposed SBA financial assistance or direct SBA development if—

(1) The state has not adopted a process under Executive Order 12372 (3 CFR, 1982 Comp., p. 197), as amended by Executive Order 12416 (3 CFR, 1983 Comp., p. 186); or

(2) The assistance or development involves a program or activity not selected for the state process.

(b) Notice may be made by publication in the Federal Register or other means as SBA deems appropriate.

(c) Except in unusual circumstances the Administrator gives state processes or directly affected state, area-wide, regional, and local officials and entities at least 60 days to comment on proposed SBA financial assistance or direct SBA development.

(d) In cases where SBA delegates the review, coordination, and communication authority under this subpart, this section also applies.

### § 101.404 How does the Administrator receive comments?

(a) The Administrator follows the procedures of § 101.405 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 101.402(a).

(b)(1) The single point of contact is not obligated to transmit comments from state, area-wide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, area-wide, regional, and local officials and entities may submit comments to SBA.

(d) If a program or activity is not selected for a state process, state, area-wide, regional, and local officials and entities may submit comments to SBA. In addition, if a state process recommendation for a non-selected program or activity is transmitted to SBA by the single point of contact, the Administrator follows the procedures of § 101.405.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under this subpart and for which the Administrator is not required to apply the procedures of § 101.405 when such comments are provided by a single point of contact directly to SBA by a commenting party.

### § 101.405 How does the Administrator respond to comments?

(a) If a state process provides a recommendation to SBA through its

single point of contact, the Administrator:

(1) Accepts the recommendation; or

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in a form the Administrator deems appropriate. The Administrator may also supplement the written explanation by telephone or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that—

(1) SBA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) Because of unusual circumstances the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing.

### § 101.406 What are the Administrator's responsibilities in interstate situations?

The Administrator is responsible for—

(a) Identifying proposed SBA financial assistance and direct SBA development that have an impact on interstate areas;

(b) Notifying appropriate officials and entities in states which have adopted a process and selected an SBA program or activity;

(c) Making efforts to identify and notify the affected state, area-wide, regional, and local officials and entities in states that have not adopted a process or selected an SBA program or activity;

(d) Using the procedures of § 101.405 if a recommendation of a designated area-wide agency is transmitted by a single point of contact in cases in which the review, coordination, and communication with SBA has been delegated; and

(e) Using the procedures of § 101.405 if a state process provides a state recommendation to SBA through a single point of contact.

### § 101.407 May the Administrator waive these regulations?

The Administrator may waive any provision of §§ 101.400 through and including 101.406 in an emergency.

## PARTS 133 AND 135—[REMOVED]

2. Parts 133 and 135 are removed.

Dated: January 19, 1996.  
 Philip Lader,  
*Administrator.*  
 [FR Doc. 96-1163 Filed 1-25-96; 8:45 am]  
 BILLING CODE 8025-01-P

### 13 CFR Part 105

#### Standards of Conduct and Other Employee Responsibilities

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) amends its regulations governing employee standards of conduct. This amendment repeals provisions that are superseded by the Office of Government Ethics (OGE) Uniform Standards of Conduct for Employees of the Executive Branch (5 CFR Part 2635); amends one provision by adding the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor; and renumbers the remaining provisions with several minor technical amendments.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robinson S. Nunn, Chief Counsel for Ethics, Office of the General Counsel, U.S. Small Business Administration, 409 Third Street SW., Washington, D.C. 20416, (202) 205-6867, or Martin D. Teckler, Deputy General Counsel (202) 205-6642.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration repeals numerous provisions of its existing standards of conduct regulations at 13 CFR Part 105 as either superseded by the Office of Government Ethics' (OGE) Uniform Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), eliminated by other regulatory authority, or determined to be inappropriate for continued inclusion in this part. SBA repeals the following sections of 13 CFR Part 105: 105.101 through 105.301; 105.401; 105.402; 105.405; 105.406 through 105.408; 105.501 through 105.505; 105.506 except paragraph (g)(1); 105.507 through 105.515; 105.518 through 105.521 and 105.901. The remaining provisions of 13 CFR Part 105 are renumbered and renamed "Standards of Conduct and Employee Restrictions and Responsibilities."

In place of SBA's former standards at 13 CFR Part 105, SBA issues a residual cross reference provision at new 13 CFR section 105.101 to refer to the uniform Standards of Conduct and financial disclosure regulations for Executive

Branch employees and SBA's Supplemental Standards of Conduct regulation. Additionally, SBA reissues, in the new 13 CFR Part 105, several provisions regarding other employee responsibilities.

Proposed changes to Part 105 were published in the Federal Register on November 27, 1995 (60 FR 58260). The public was invited to comment during a thirty day comment period. SBA received seven comments (all of which concerned post-employment restrictions) during that time period. SBA discusses the comments and SBA's response here.

Section 105.201, "Definitions": This section provides definitions unique to SBA which are applicable throughout Part 105. The definition of "SBA Assistance" (§ 105.201(e)) was proposed to be amended to include all participating lenders, including banks, as recipients of SBA Assistance. This proposal generated several comments, which noted that SBA employees with specialized knowledge losing jobs due to downsizing would now be precluded from employment with participating lenders, and that such employment is often the only means available to such employees to maintain a customary standard of living and make use of education and skills. SBA employees commented that the SBA would be unable to attract private sector employees to the SBA if they believe that they will be unmarketable when they leave the government. In addition, participants in SBA's financial programs commented that the interpretation would deny them a qualified universe of potential employees to the detriment of the delivery of SBA's programs.

As a result of these comments, and those relative to the other sections contained in the proposal (discussed below), SBA has determined that revision of the definition will be deferred. This final rule therefore merely restates the existing definition of SBA Assistance, and does not adopt the proposed change, pending further review.

SBA also received three comments concerning Section 105.202, "Employment of Former Employee by Person Previously the Recipient of SBA Assistance". This section, the first of two sections providing restrictions relating to former SBA employees, was not changed by the proposed rule, although the preamble to this section did not make that fact completely clear. All of the comments were directed at the effect on § 105.202 of the addition of participating lenders as recipients of SBA Assistance to the definition section of section 105.201(e).

All three commenters were concerned that agency employees losing their employment as a result of an involuntary separation or those otherwise seeking post-SBA employment would be unfairly denied employment best suited for their specialized knowledge and education and would be unable to maintain their lifestyles and support their families by virtue of section 105.202. One of the commenters also argued that 105.202 should not apply to Certified Development Companies (CDC's), because they are not business enterprises receiving loans from the agency and should therefore be exempt from this rule.

As set forth above, the proposed rule made no change to section 105.202 which is based upon section 13 of the Small Business Act. To the extent all of these comments were directed at the addition of participating lenders to the § 105.201 definition of SBA Assistance, that issue is addressed by the withdrawal of the proposal.

The same issue arises in connection with section 105.203 "SBA Assistance to Person Employing Former SBA Employee." This section is based on the same provision of the Small Business Act as section 105.202. It prohibits SBA from providing assistance to any Person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor, or debtor, any individual who, within one year prior to the request for such assistance, was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor.

Additionally, this section sets forth the criteria to be used in reviewing such applications for SBA Assistance.

SBA received one comment on this section to the effect that this provision unfairly penalizes a business which hires a qualified former SBA employee.

As discussed above, to the extent that the impact of this section was proposed to be altered by adding Participating lenders as recipients of Assistance, the provision is unaffected by this rule. However, it is SBA's intent to revisit both sections 105.202 and 105.203 at a later point keeping in mind the comments received in this rulemaking.

SBA received no other comments on this rule. For a detailed description of the other changes made to this rule, please refer to SBA's proposed rules, published at 60 FR 58260 (November 27, 1995).