

receipt, unless the Administrator determines that unusual circumstances exist, in which case the PA Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

§ 102.53 How will SBA respond to my appeal?

The PA Officer will:

(a) Make the amendment you request, sending all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record in a different manner; or decline to amend it at all:

(1) Sending all individuals who had previously received a copy of that record a copy of the amended record;

(2) Telling you why your request was not granted in full and that you can seek judicial review; and

(3) Marking the areas of dispute, including your statement of disagreement in the file, and, if appropriate, a concise statement of why SBA refused to amend the record as you requested, sending this material to all individuals who had previously received a copy of that record.

§ 102.54 How can I obtain judicial review of an SBA Privacy Act decision?

You may bring a civil action against SBA in a United States district court if the SBA:

(a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;

(b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to you that may be made on the basis of such records, and consequently a determination is made which harms you; or

(c) Fails to comply with any other provisions of the PA (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

§ 102.55 What must SBA tell the individuals from whom it collects information?

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

(a) Whether disclosure of the information is voluntary or mandatory;

(b) By what authority SBA is collecting the information;

(c) For what principal purpose or purposes SBA is collecting the information;

(d) What routine uses might be made of that information; and

(e) What will happen if the information isn't supplied.

§ 102.56 Will SBA release my name or address?

No, unless compelled to by law.

§ 102.57 Do I have to give SBA my SSN?

(a) No. You need not give SBA your SSN, even if SBA asks for it.

(b) If SBA asks you for your SSN, it must tell you under what authority it seeks your SSN, and for what purpose.

(c) SBA cannot withhold a benefit solely because you refuse to tell it your SSN.

§ 102.58 When will SBA show personnel records to a representative?

(a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.

(b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

§ 102.59 What fees will SBA charge me for my records?

SBA will charge you only for photocopying at the rate of 10 cents per page. SBA will not charge you for finding or reviewing your records. Fees less than \$25 will be waived.

§ 102.60 May I be informed of disclosures made of my records?

SBA will tell you what disclosures it made of your records if you ask, except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

§ 102.61 Are there Matching Program procedures?

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a, 552a notes). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any federal agency, contractor of any federal agency, state or local government, or agency of any state or local government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of any such agreement by writing to the Privacy Act Officer.

PART 137—[REMOVED]

2. Part 137 is removed.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96-1159 Filed 1-26-96; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Part 103

Standards for Conducting Business With SBA

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is streamlining its regulations by eliminating many rules and simplifying and improving those that remain. This final rule reorganizes and streamlines the entire Part 103, which covers the standards one must meet to conduct business with SBA. It makes the standards clearer and more understandable to those who are regulated, and easier for SBA to enforce.

EFFECTIVE DATE: This rule is effective February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Dowd, Director, Office of Loan Programs, at (202) 205-6490.

SUPPLEMENTARY INFORMATION: Title 13 CFR Part 103 contains SBA's policies governing the standards for suspending

or revoking the privileges of persons who conduct business with SBA on behalf of applicants or lenders. This final rule reorganizes and streamlines Part 103, making it easier to understand and enforce. It changes the title of the Part to "Standards for Conducting Business with SBA" to describe more clearly the scope of the regulations. The sections stating the statutory provisions underlying the Part and its purpose—103.13 and 103.13-1—are eliminated as unnecessary. The rule renumbers the sections that remain: present §§ 103.13-2 through 103.13-6 would become §§ 103.1-103.5. The final rule clarifies the existing definition of agents who appear before SBA on behalf of applicants for assistance, adds definitions for "packagers", "lender service providers," and "referral agents", and provides that these categories of agents are specifically covered by SBA's requirements governing conduct of business. It also amends, in certain respects, and adds greater specificity to the definition of "good cause" for which the Administrator may revoke or suspend the privilege for conducting business with SBA. It adds provisions prescribing the use and form of lender service provider agreements which must contain certain provisions regarding services to be provided and compensation, including a prohibition on secondary market premium sharing. In addition to these substantive changes, the final rule is written in clearer, more straightforward language than the present Part.

The proposed rule was published on November 24, 1995 at 60 FR 57980. A total of 26 commenters, virtually all Certified Development Companies, contacted SBA during the comment period with suggestions and observations about the proposed rule. All commenters expressed at least some level of concern about the proposal. In general, these concerns were based on the breadth of the proposed rule.

A majority of the commenters offered negative observations about the scope of the definitions in section 103.1. Most of these comments focused on subsections (a) and (b) and criticized the definitions of the terms "agent" and "conduct business with SBA." Many of these commenters were particularly concerned about the definitions in light of SBA's expressed intention (in the preamble to the proposed rule) to register and train agents, and to require under section 103.5 that all agents execute and provide to SBA a compensation agreement.

The final rule addresses this concern by clarifying that only those persons or

entities conducting business with SBA—those who actually prepare or submit on behalf of an applicant an application for assistance and those contractors who provide services to participants in SBA's business loan program pursuant to written agreements with those participants—will be considered "agents". SBA does not intend to regulate persons or entities, such as real estate appraisers and environmental specialists, who simply supply information that is used in the preparation of an application.

Fourteen commenters criticized section 103.4, which defines "good cause" for suspension or revocation of the privilege to conduct business with SBA. In general, the comments about section 103.4 criticized terms such as "unethical activity" and "reasonable fees" as too broad and vague. More specifically, three commenters complained that persons and entities should be allowed under subsection 103.4(d) to use the words "Small Business Administration" or "SBA" in advertising. Four commenters felt that the "two master" prohibition in subsection 103.4(g) should be clarified.

SBA intends to provide guidelines in its Standard Operating Procedures (SOP) for what will constitute "unethical activity" and "reasonable fees." The final rule states that persons may use the words "Small Business Administration" or "SBA" in advertisements if the advertisement does not imply endorsement or sponsorship by SBA. The final rule continues to prohibit the use of the SBA seal or symbol in advertisements. The "two master" rule and the exceptions to it have been substantially altered in the final rule. The two master rule will now only apply when a person or entity acts as both a lender service provider or referral agent and packager for an applicant on the same business loan and receives compensation for such activity from both the lender and applicant. The two exceptions stated in the proposed rule have therefore been deleted and replaced by only one: cases in which a referral agent also acts as a packager and is compensated by both the lender for referral agent activities and the applicant for packaging activities.

Finally, 14 commenters noted problems with section 103.5, which governs the regulation of an agent's fees and provision of services. These complaints related directly to many of the same commenters' concerns about the scope of the definition of "agent" in section 103.1. The changes in the definition of "agent" discussed above address this problem. Several commenters questioned SBA's ability to

review all compensation agreements for reasonableness. Section 103.5 does not require such a review and SBA does not intend to evaluate each compensation agreement for reasonableness; it will only undertake a review if an applicant requests that it do so. Two commenters also noted that use of the terms "compensation agreement" and "lender service provider agreement" should be made consistent in subsections 103.5 (a) and (b). The final rule has been amended to make clear the distinction between the terms and the intended treatment of each type of agreement.

As noted above and in the preamble to the proposed rule, SBA intends to require all packagers and lender service providers to register with SBA for purposes of keeping track of who is performing such activities on behalf of applicants for assistance or lenders. SBA will provide training for anyone or any entity that wishes to represent applicants for SBA assistance or provide services to lenders. The development of these initiatives will take place over the next fiscal year, in consultation with representatives of the affected industries. To the extent that they require modifications of this final rule, such modifications will be made in later rulemakings.

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. Ch. 35)

SBA certifies that this rule involves internal administrative procedures and is not a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. 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. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does 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 in 13 CFR Part 103

Administrative practice and procedure.

Accordingly, pursuant to the authority set forth in sections 5 and 13 of the Small Business Act, 15 U.S.C. 634 and 642, SBA hereby revises part 103 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

103.1 Key definitions.

103.2 Who may conduct business with SBA?

103.3 May SBA suspend or revoke an Agent's privilege?

103.4 What is "good cause" for suspension or revocation?

103.5 How does SBA regulate an Agent's fees and provision of service?

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an applicant or participant by conducting business with SBA.

(b) The term *conduct business with SBA* means:

(1) Preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) Preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) Participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf;

(4) Acting as a lender service provider; and

(5) Such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a "Lender Service Provider" on a loan-by-loan basis.

(e) *Packager* means an Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines

whether or not one is a "Packager" on a loan-by-loan basis.

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

(g) *Participant* means a person or entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

§ 103.2 Who may conduct business with SBA?

(a) If you are an Applicant, a Participant, a partner of an Applicant or Participant partnership, or serve as an officer of an Applicant, Participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an Agent, you may conduct business with SBA on behalf of an Applicant, Participant or lender, unless representation is otherwise prohibited by law or the regulations in this part or any other part in this chapter. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any Agent supply written evidence of his or her authority to act on behalf of an Applicant, Participant, or lender as a condition of revealing any information about the Applicant's, Participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an Agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any Agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under Part 134 of this chapter.

§ 103.4 What is "good cause" for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an Applicant by another entity when there is an undisclosed

business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the Agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an Applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, advertising using the words *Small Business Administration* or *SBA* in a manner that implies SBA's endorsement or sponsorship, use of SBA's seal or symbol, and giving a "guaranty" to an Applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or Lender Service Provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, conspiracy, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to this "two master" prohibition exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the Applicant has been made aware.

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

(a) Any Applicant, Agent, or Packager must execute and provide to SBA a compensation agreement, and any Lender Service Provider must execute and provide to SBA a Lender Service Provider agreement. Each agreement governs the compensation charged for services rendered or to be rendered to the Applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of Lender Service Provider agreement to be used by Agents.

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the Agent or Packager must: reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the Applicant, and refrain from charging or collecting, directly or indirectly, from the Applicant an amount in excess of the amount SBA deems reasonable.

(c) Each Lender Service Provider must enter into a written agreement with each lender for whom it acts in that capacity. SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA's suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for Lender Service Providers. However, such compensation may not be directly charged to an Applicant or borrower.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96-1350 Filed 1-26-96; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Parts 112, 113, 124, 132, 134, and 136**Rules of Procedure Governing Cases Before the Office of Hearings and Appeals**

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all

of its existing regulations to determine which might be revised or eliminated. This final rule essentially reorganizes all but two of the regulations pertaining to procedures before the Office of Hearings and Appeals (OHA) and consolidates them into one part. In addition, the rule clarifies, simplifies, and significantly shortens those regulations. A number of substantive changes are also made.

DATES: This rule is effective February 28, 1996. This rule applies with respect to all cases filed with OHA on or after February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Fox, Chief Counsel for Special Litigation, Office of General Counsel, Small Business Administration, 409 Third Street SW., Washington, D.C. 20416, at (202) 205-6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This rule consolidates most existing regulations governing proceedings before OHA into part 134 with the exception of those solely relating to 8(a) program proceedings, which are set forth in part 124 of this chapter, and those solely pertaining to proceedings under the Program Fraud Civil Remedies Act, which are contained in part 142 of this chapter. This rule also clarifies, simplifies, and revises the current rules, reorganizes sections for ease of use, and eliminates unnecessary provisions.

The rule is divided into four subparts. Subpart A contains general rules. Subpart B contains rules of practice generally applicable to all cases before OHA except size and SIC code appeals. However, as set forth in § 134.201, in the case of a conflict between a particular rule in part 134, and a rule of procedure pertaining to OHA appearing in another part of this title, the latter rule shall govern. Subpart C contains the rules applicable to size and SIC code appeals. Subpart D contains the rules for implementation of the Equal Access to Justice Act, currently contained in part 132.

Proposed changes to parts 132 and 134 were published in the Federal Register on November 27, 1995 (60 FR 58282). The public was invited to comment during a thirty-day comment period. SBA received no comments concerning these parts during that time period. Accordingly, the following final rule contains no changes, other than

minor clarifications, technical corrections, and deletions of unnecessary language.

The proposed rule consolidated into part 134 rules of practice only applicable to 8(a) program appeals. However, part 124 of chapter 13 is not being amended at this time and, thus, certain of the provisions in the proposed rule which solely related to the 8(a) program have been deleted as unnecessary in light of the existing part 124. Specifically, proposed §§ 134.104, 134.203(a)(2), 134.213, 134.222 (a) and (b), 134.223 (c) and (d), 134.224, 134.226(b), and 134.227(a) have been deleted, in whole or in part, so as to eliminate references to 8(a) program appeals.

For a detailed description of the other changes made to this rule, please refer to SBA's proposed rule, published at 60 FR 58282 (November 27, 1995).

Finally, parts 112, 113, 124, and 136 are amended so that the citations, within those parts, to specific sections of part 134 will correspond to the section numbers set forth in this rule.

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. Ch. 35)

SBA certifies that this rule does 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 would reorganize and simplify the rules governing procedures before SBA's Office of Hearings and Appeals. Contracting opportunities and financial assistance for small business are not 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. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does 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.