

§ 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.

PART 102—RECORD DISCLOSURE AND PRIVACY

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Subpart A—Disclosure of Information

§ 102.1 What does this subpart do?

This subpart describes the procedures by which the SBA makes documents

available under the Freedom of Information Act (“FOIA”) (5 U.S.C. 552).

§ 102.2 How can I get records from SBA?

(a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.

(b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you want. If you don’t know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, FOIA & PA Office, 409 Third Street SW., Suite 5900, Washington DC 20416. The office receiving your letter will forward it to the correct office.

§ 102.3 How long will it take for SBA to respond to my request for records?

(a) If you have met the fee requirements of § 102.8, SBA will respond within 10 working days after the correct office receives your request, unless you have requested an especially large number of records, the records are not located in the office handling the request, or SBA needs to consult with another government office.

(b) If you make your request on behalf of another person, SBA will respond within 10 working days after you present a document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the authorization needed.

(c) If you send your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(d) If SBA determines that one of the circumstances described in paragraph (a) of this section apply, it will respond within 20 working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

§ 102.4 How will SBA respond to my request?

Within the time limit described in § 102.3, SBA will either:

- (a) Give you all the records you requested;
- (b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision; or
- (c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

§ 102.5 If SBA grants my request, which records will be supplied?

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

§ 102.6 How will SBA respond to requests for business information?

(a) Business information is a trade secret, or commercial or financial information, contained in records provided to SBA by any person and which may be protected from disclosure under Exemption Four of FOIA (5 U.S.C. 552(b)(4)).

(b) The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary, such as a bank.

(c) SBA will disclose upon request business information that has previously been released to the general public.

(d) If you request business information submitted to SBA prior to March 1, 1996 which has not previously been released to the general public, SBA will notify the submitter of your request upon SBA's receipt of it if SBA intends to release that information. SBA will give the submitter 5 working days to identify information the disclosure of which would likely cause substantial competitive harm and why that harm would occur unless SBA intends to deny your request in full.

(e) If you request business information submitted to SBA after March 1,

1996 which has not previously been released to the general public, SBA will notify the submitter if it intends to release business information which either the submitter has previously claimed or which SBA believes to be confidential and the disclosure of which would cause substantial competitive harm. The submitter will have 5 working days to object to the disclosure, explaining why the harm would occur.

(f) Whenever a submitter objects to disclosure, SBA will consider the submitter's objections, but will not be bound by it. If SBA discloses information despite a submitter's objection, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by FOIA. In this notice, SBA will tell the submitter when and what it intends to disclose.

(g) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

§ 102.7 What are the procedures for submitters of business information to SBA after March 1, 1996?

Submitters may identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed. The identification shall lapse after 10 years, unless renewed in writing.

§ 102.8 What fees will SBA charge?

(a) *Basic fees.* (1) *For manual record search.* SBA will charge \$18 per hour.

(2) *For computer record searches.* SBA will charge the actual costs.

(3) *For review and disclosure determinations.* SBA will charge \$18 per hour.

(4) *Duplication.* SBA will charge 10 cents per page for photocopy duplication, and the actual cost of reproduction for other methods.

(5) *Certifying records.* SBA will charge actual costs.

(6) *For requested special types of delivery other than first-class mail.* SBA may charge the actual cost.

(b) *If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media.* SBA will charge you only for the cost of duplication after the first 100 pages.

(1) *What is an educational institution?* A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) *What is a non-commercial scientific institution?* An organization which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) *What is a representative of an educational or non-commercial scientific institution?* A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.

(4) *What is a representative of the news media?* An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered "news media", this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.

(c) *Member of the general public.* If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.

(d) *Commercial requester.* If you are a commercial requester you must pay all

the basic fees set forth in paragraph (a) of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.

(e) *How does SBA determine what category of requester I am?* The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.

(f) *Tell us how much you are willing to pay.* To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.

(g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed \$25.00, SBA will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than \$25.

(h) SBA will waive fees less than \$25.

(i) If the fee is more than \$250, or if you have a history of failing to pay FOIA fees in a timely manner, SBA will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *Who determines the fee?* The SBA office which processes your request.

(k) *When do you pay the fee?* SBA will bill you when it responds to your request. You must pay within thirty-one calendar days.

(l) *Failure to pay fees.* (1) If you do not pay by the thirty-first day after the billing date, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, SBA may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(m) *Unsuccessful searches.* If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) *Multiple requests.* If you make multiple requests at or about the same

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time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(o) *Reduction of fees in the public interest.* If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

§ 102.9 How may I appeal a denial of my request for information or a fee determination?

(a) You must write to the Chief, FOIA & PA Office at 409 Third Street SW., Suite 5900, Washington, DC 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual who denied the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

(ii) The fee that office charged.

(iii) The fee, if any, you believe should have been charged.

(iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.

(v) Any other information you deem appropriate.

(d) The Chief will decide your appeal, unless the Chief originally made the determination you are appealing. In that case, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will decide your appeal within 20 working days from the date of its receipt. SBA may have an additional 10

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working days if unusual circumstances require.

(f)(1) If you are appealing a decision to deny your request for records, SBA will either:

(i) Give you the records you requested; or

(ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of SBA's decision.

(2) If you are appealing a fee determination, SBA will either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

§ 102.10 How can I get the Public Index of SBA materials?

(a) The Public Index is a document which provides identifying information about official documents which SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can obtain the Public Index from any SBA office.

§ 102.11 What happens if I ask SBA for a record that another Federal agency generated?

Such a request is a request directed to the wrong office, as that term is used in § 102.3(c). SBA will forward your request to the generating agency.

§ 102.12 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General

Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such non-compliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate.

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) ("PA") only where an important public policy need for such exemption has been determined pursuant to or under specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose required of SBA by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart;

(b) To those SBA employees who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (FOIA);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law; and

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(2) The head of the agency or instrumentality has made a written request to the PA Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(i) To a person showing compelling circumstances affecting the health or safety of an individual. Upon disclosure, SBA will notify such individual at his or her last known address;

(j) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(k) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(l) Pursuant to the order of a court of competent jurisdiction; or

(m) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 102.23 Are there special rules about personnel and equal employment opportunity files?

(a) The provisions of parts 293 and 297 of title 5 of the Code of Federal Regulations govern all SBA files which the Office of Personnel Management determines are personnel files.

(b) The provisions of part 1611 of title 29 of the Code of Federal Regulations govern all Equal Employment Opportunity complaint files.

§ 102.24 What is a record?

A record is information which SBA maintains on an individual and which includes either his name or an identifying symbol (such as a fingerprint, a social security number ("SSN"), or a photograph).

§ 102.25 What is a system of records?

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

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§ 102.26 What does this subpart mean by "person to whom a record pertains" or "you"?

When this subpart refers to the "person to whom a record pertains" or uses the pronoun "you", it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

§ 102.27 What records are partially exempt from the provisions of the Privacy Act?

(a) The following systems of records are exempt from certain provisions of the PA: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).

(b) The provisions of the PA from which these systems of records are exempt are subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules).

(c) The systems of records described in paragraph (a) of this section are exempt from the provisions of the Privacy Act described in paragraph (b) of this section in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions in paragraphs (a) through (c) of this section, the systems of records described in paragraph (a) of this section numbered SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

(1) Information compiled to identify individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information, including reports of informants and investigators, associated with an identifiable individual compiled to investigate criminal activity; or

(3) Reports compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision associated with an identifiable individual.

(e) The systems of records described in paragraph (d) of this section are fully exempt from the PA to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

(1) Prevent the subjects of Office of Inspector General (OIG) investigations from using the PA to frustrate the investigative process;

(2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;

(3) Protect the confidentiality of other sources of information;

(4) Avoid endangering confidential sources and law enforcement personnel;

(5) Prevent interference with law enforcement proceedings;

(6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;

(7) Prevent the disclosure of investigative techniques; or

(8) Prevent the disclosure of classified information.

§102.28 What about information compiled for a civil action?

No individual shall have access to any information compiled by SBA in reasonable anticipation of a civil ac-

tion or proceeding. In the event of a question as to disclosure, the Systems Manager for the system of records involved will rely on the opinion of the General Counsel or designee, and will also consult with the PA Officer.

§102.29 Who administers SBA's responsibilities under the Privacy Act?

The PA Officer has overall responsibility for administering the PA for SBA. A Systems Manager is responsible for administering the PA as to systems of records within an SBA Office.

§102.30 How can I write to the Privacy Act Officer?

You can write to the PA Officer at 409 Third Street SW., Suite 5900, Washington, DC 20416.

§102.31 Who appoints Systems Managers?

The senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

§102.32 What do Systems Managers do?

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

(a) Acting as the initial contact person for individuals seeking access to or amendment of their records.

(b) Responding to requests for information.

(c) Discussing the availability of records with individuals.

(d) Amending records in cases where amended information is not controversial and does not involve policy decisionmaking.

(e) Informing individuals of any reproduction fees to be charged.

(f) Assuring that their systems of records contain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 102.33 How can I write to a Systems Manager?

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the PA Officer at 409 3rd Street SW., Suite 5900, Washington, DC 20416, who will forward your request to the proper Systems Manager.

§ 102.34 How can I see records kept on me?

(a) You may look at any information pertaining to yourself contained in any SBA system of records unless some law or regulation prohibits it.

(b) In order to see this information, you must ask for it in writing, identifying what records you want. The writing should be addressed to the Systems Manager overseeing the system of records containing the record you wish to see.

(c) The Systems Manager (or, when appropriate, the PA Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person to whom the information pertains.

§ 102.35 How long will it take SBA to respond to my request?

The Systems Manager will respond within 10 working days.

§ 102.36 How will SBA respond to my request?

The Systems Manager will inform you that:

(a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or

(b) Your request is granted and you may view your record, in which case he or she will set forth the time and date for you to review your record in the presence of an SBA employee; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.37 How may I appeal a decision to deny me access to my records?

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

§ 102.38 To whom should my appeal be addressed?

(a) *Denial of a personnel file.* Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) *Denial of an Equal Employment Opportunity Complaint File.* Address an appeal of a denial of a request for an Equal Employment Opportunity Complaint File to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Appeal the denial of any other record to the PA Officer. See § 102.30.

§ 102.39 By when must I appeal to the Privacy Act Officer?

Your appeal must reach the PA Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to answer your request, your appeal must reach the PA Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under § 102.35.

§ 102.40 When will SBA respond to my appeal?

The PA Officer will respond to you within 30 working days of the date when your appeal was received.

§ 102.41 How will SBA respond to my appeal?

The PA Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.42 How can I get SBA to amend a record kept on me?

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the PA Officer, who will forward it to the right Systems Manager. See § 102.30.

§ 102.43 What should my petition say?

Your petition should include the following:

- (a) In what system of records the record you want amended is kept.
- (b) What record you want amended.
- (c) What specific information in that record you want amended.
- (d) Why you want the record amended.
- (e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record.
- (f) What the record should say.

§ 102.44 For what reasons will SBA amend my record?

SBA seeks to maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

- (a) The record is not accurate.
- (b) The record is not relevant to any legitimate SBA concern.
- (c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.

(d) The record is incomplete. There may be additional information relevant to the material contained in the record.

§ 102.45 Will SBA ask me for more information after I make my request?

Perhaps, in which case the procedures of § 102.34(c) shall apply.

§ 102.46 When will SBA respond to my request?

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

§ 102.47 How will SBA respond to my request?

The Systems Manager will:

- (a) Make the amendment you request, and send 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, sending all individuals who had previously received a copy of that record a copy of the amended record and, in addition, telling you why your request was not granted in full and what appeal rights you have; or
- (c) Decline to amend the record, explaining why your request was not granted and telling you of your appeal rights.

§ 102.48 How do I appeal a refusal to amend a record kept on me?

Your appeal should be in writing and include the following:

- (a) All of the information contained in your original request to amend the record;
- (b) Any response of the Systems Manager, including any reasons for denying your request; and
- (c) Any information you wish to submit in response to the Systems Manager's findings.

§ 102.49 To whom should I address my appeal?

- (a) *Personnel file*. Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.
- (b) *Equal Employment Opportunity Complaint File*. Address your appeal to the Equal Employment Opportunity

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Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Address your appeal to the PA Officer. See §102.30.

§ 102.50 By when must I submit my appeal?

Your appeal must be received by the PA Officer within 30 calendar days of the date the Systems Manager declined to amend your records, or within 90 calendar days of the date the Systems Manager should have responded under §102.46 if the Systems Manager did not so respond.

§ 102.51 By what standards will the Privacy Act Officer review my appeal?

The PA Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in § 102.44. The PA Officer will review all relevant information and may seek the views of other SBA personnel. The PA Officer may review information not available to or not used by the Systems Manager.

§ 102.52 When will SBA respond to my appeal?

The PA Officer will respond to your appeal within 30 working days of its 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

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(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 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).

SOURCE: 61 FR 2681, Jan. 29, 1996, unless otherwise noted.

§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;