

Title 13—Business Credit and Assistance

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ABBREVIATIONS USED IN THIS CHAPTER:

SBA = *Small Business Administration*. SBID = *The Small Business Investment Division of SBA*. RFC = *Reconstruction Finance Corporation*.

CHAPTER I—SMALL BUSINESS ADMINISTRATION

EDITORIAL NOTE: The Small Business Administration has asked the Director of the Federal Register to inform users of this chapter that parts 143, 145, and 146 are common rule regulations that cannot be amended by the Small Business Administration unilaterally.

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PART 101—ADMINISTRATION

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SOURCE: 61 FR 2394, Jan. 26, 1996, unless otherwise noted.

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, SW., Washington, DC 20416.

§ 101.103 Where are SBA's 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's 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:



(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, SW., 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.

PART 102—RECORD DISCLOSURE AND PRIVACY

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 - 102.2 Public reading rooms.
 - 102.3 Requirements pertaining to the submission of requests.
 - 102.4 Timing of responses to requests.
 - 102.5 Responses to requests.
 - 102.6 Fees.
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 - 102.8 Appeals.
 - 102.9 Public Index.
 - 102.10 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?

Subpart B—The Privacy Act

- 102.20 What privacy rights does this subpart regulate?
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- 102.22 When will SBA disclose records?
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- 102.24 What is a record?
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- 102.26 What does this subpart mean by "person to whom a record pertains" or "you"?
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