

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.

PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES

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- 105.403 Designated Agency Ethics Officials.

AUTHORITY: 5 U.S.C. 7301; 15 U.S.C. 634, 637(a)(18) and (a)(19), 642, and 645(a).

SOURCE: 61 FR 2399, Jan. 26, 1996, unless otherwise noted.

STANDARDS OF CONDUCT

§ 105.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

In addition to this part, Small Business Administration (SBA) employees should refer to the Uniform Standards of Ethical Conduct for Executive Branch employees at 5 CFR part 2635, the SBA Supplemental Standards of Ethical Conduct at 5 CFR chapter XLIV, and the Uniform Financial Disclosure regulation for Executive Branch employees at 5 CFR part 2634.

RESTRICTIONS AND RESPONSIBILITIES RELATED TO SBA EMPLOYEES AND FORMER EMPLOYEES

§ 105.201 Definitions.

(a) Employee means an officer or employee of the SBA regardless of grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise. Employee shall include those within the category of Special Government Employee.

(b) Special Government Employee means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to ex-

ceed 130 days during any period of 365 consecutive days.

(c) Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) Household member means spouse and minor children of an employee, all blood relations of the employee and any spouse who resides in the same place of abode with the employee.

(e) SBA Assistance means financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

§ 105.202 Employment of former employee by person previously the recipient of SBA Assistance.

(a) No former employee, who occupied a position involving discretion over, or who exercised discretion with respect to, the granting or administration of SBA Assistance may occupy a position as employee, partner, agent, attorney or other representative of a concern which has received this SBA Assistance for a period of two years following the date of granting or administering such SBA Assistance if—

(1) The date of granting or administering such SBA Assistance was within the period of the employee's term of employment; or

(2) The date of granting or administering such SBA Assistance was within one year following the termination of such employment.

(b) Failure of a recipient of SBA Assistance to comply with these provisions may result, in the discretion of SBA, in the requirement for immediate repayment of SBA financial Assistance, the immediate termination of other SBA Assistance involved or other appropriate action.

§ 105.203 SBA Assistance to person employing former SBA employee.

(a) SBA will not provide SBA Assistance to any person who has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director,