

Small Business Administration

§ 103.5, Nt.

(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.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80587, Dec. 14, 2020, §103.4 was amended by revising paragraph (g), effective Mar. 27, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 103.4 What is “good cause” for suspension or revocation?

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(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 the “two master” prohibition in this paragraph (g) 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.

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§ 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) Total compensation charged by an Agent or Agents to an Applicant for services rendered in connection with obtaining an SBA-guaranteed loan must be reasonable. In cases where an Agent or Agents charge any fee to an

Applicant in excess of those specified in this part, the Agent(s) must reduce the charge and refund to the Applicant any amount in excess of the fee permitted by SBA. SBA considers the following amounts to be reasonable for the total compensation that an Applicant can be charged by one or more Agents:

(1) *For loans up to and including \$500,000:* A maximum of 3.5 percent of the loan amount, or \$10,000, whichever is less;

(2) *For loans \$500,001–\$1,000,000:* A maximum of 2 percent of the loan amount, or \$15,000, whichever is less; and

(3) *For loans over \$1,000,000:* A maximum of 1.5 percent of the loan amount, or \$30,000, whichever is less.

(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 charged to an Applicant or Borrower.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80587, Dec. 14, 2020, §103.5 was amended by revising paragraph (b) and the last sentence of paragraph (c), effective Mar. 27, 2021. For the convenience of the user, the revised text is set forth as follows:

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

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(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) * * * 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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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 Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the regulations at 5 CFR part 2634 entitled, Executive Branch Financial Dis-

closure, Qualified Trusts and Certificates of Divestiture.

[69 FR 63922, Nov. 3, 2004]

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 exceed 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