

Small Business Administration

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(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.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020; 85 FR 80587, Dec. 14, 2020]

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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 Disclosure, 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

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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, creditor or debtor, any individual who, within one year prior to the request for such SBA Assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision; otherwise, his or her decision is final.

(b) In reviewing requests for approval, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA Assistance requested;

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(3) The position held by the former employee with SBA and its relationship to the SBA Assistance requested; and

(4) Whether an apparent conflict of interest might exist if the SBA Assistance were granted.

§ 105.204 Assistance to SBA employees or members of their household.

Without the prior written approval of the Standards of Conduct Committee, no SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a household member.

§ 105.205 Duty to report irregularities.

Every employee shall immediately report to the SBA Inspector General any acts of malfeasance or misfeasance or other irregularities, either actual or suspected, arising in connection with the performance by SBA of any of its official functions.

§ 105.206 Applicable rules and directions.

Every employee shall follow all agency rules, regulations, operating procedures, instructions and other proper directions in the performance of his official functions.

§ 105.207 Politically motivated activities with respect to the Minority Small Business Program.

(a) Any employee who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to section 8(a) or section 7(j) of the Small Business Act, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees shall expeditiously report to the SBA Inspector General any such action for which such employee's participation has been solicited or directed.

(b) Any employee who willfully and knowingly violates this section shall be subject to disciplinary action, which