

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 25. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756 and 1766.

■ 26. Amend § 742.4(a) by removing the words “§ 703.12(c); and § 703.16(b) of this chapter” and replacing them with “§ 703.12(c), § 703.16(b), and § 723.7(b) of this chapter.”

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SMALL BUSINESS ADMINISTRATION**13 CFR Part 120**

RIN 3245–AF09

Business Loans

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: Statutory amendments to the Small Business Act require changes to SBA rules concerning guarantee fees and ongoing service fees paid by SBA participating lenders in SBA's 7(a) loan program. This direct final rule implements the statutory changes.

DATES: This rule is effective November 17, 2003, without further action, unless adverse comment is received by October 31, 2003. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Address written comments to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or to le.oliver@sba.gov. You also may submit comments electronically to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, charles.thomas@sba.gov.

SUPPLEMENTARY INFORMATION: The Small Business Investment Company Amendments Act of 2001, Public Law 107–100, 115 Stat. 966 (2001 Act) became effective on December 21, 2001. This direct final rule is necessary to amend SBA regulations in order to incorporate changes made by the 2001 Act to the Small Business Act (the Act) concerning SBA's 7(a) business loan program.

Section 6(b)(a)(1) of the 2001 Act adds section 7(a)(18)(C) to the Act, 15 U.S.C. 636(a)(18)(C), to provide for a temporary reduction in the guarantee fee payable to SBA by participating lenders in the 7(a) loan program for all 7(a) loans with a maturity over 12 months as set forth in this final rule.

TEMPORARY REDUCTION IN SBA GUARANTY FEE

(Effective 10/01/02–9/30/04)

SBA loan SBA's amount	SBA's standard guaranty fee	SBA's guaranty fee under 2 year reduction
Up To \$150,000	2% of SBA's Guaranty Portion	1% of SBA's Guaranty Portion.
More Than \$150,000 Up to \$700,000	3% of SBA Guaranty Portion	2.5% of SBA's Guaranty Portion.
More Than \$700,000	3.5% of SBA's Guaranty Portion	3.5% of SBA's Guaranty Portion (No Change).

The 2001 Act does not change the existing authority of a lender to pass the guarantee fee on to the borrower pursuant to section 7(a)(18)(A) of the Act, 15 U.S.C. 636(a)(18)(A), nor does it change the provision whereby the lender can retain 25 percent of the guaranty fee for loans of \$150,000 or less.

Section 6(a)(2) of the 2001 Act also amended section 7(a)(23)(A) of the Act, 15 U.S.C. 636(a)(23)(A), to provide for a temporary reduction to the annual fee (lender's annual service fee) payable to SBA by participating lenders. Pursuant to the 2001 Act, the temporary reduction to the annual service fee that the lender must pay SBA is equal to 0.25 percent (reduced from 0.5 percent) of the outstanding balance of the SBA guaranteed portion of a loan. The 2001 Act does not change the prohibition under section 7(a)(23)(B) of the Act, 15 U.S.C. 636(a)(23)(B), against the lender charging the borrower for the lender's annual service fee.

These two fee reductions are temporary and are applicable only to 7(a) loans approved on or after October 1, 2002, through September 30, 2004.

SBA is revising § 120.220 of its regulations to implement these

provisions. Because the 2001 Act provisions are temporary, the regulations implementing these provisions are temporary and will be promulgated as separate paragraphs in order to make clear which regulatory provisions will continue to apply after the temporary regulations sunset on September 30, 2004. Thus, paragraph (a)(2) covers the amount of the guarantee fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004. Paragraph (f)(2) covers a lender's annual service fee payable to SBA for loans approved from October 1, 2002, through September 30, 2004.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132,

SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities.

However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, and based on the following facts, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section 6 of the 2001 Act provides for a two-year reduction in the guarantee fee paid by lenders to SBA for loans equal to or less than \$700,000 and with a maturity of greater than 12 months. The SBA has determined that approximately 4,500 lenders made SBA-guaranteed 7(a) loans in FY 2002 and were thus impacted by the reduced guarantee fee.

Based on SBA's size standards, lenders with \$150 million or less in assets are considered small. However, while the SBA does develop and maintain data on the number and dollar volume of SBA lending by participating lender, it does not maintain the data by the relative asset size of the lender. Thus, based on an analysis of SBA loan volume by lender, SBA, as part of its lender oversight responsibilities, generally considers lenders with SBA assets of \$10 million or more as large lenders, and SBA believes that classification is reasonably consistent with SBA size standards centered on total lender assets. (SBA invites comment on the use of \$10 million or more in SBA assets in this context as a reasonable determinant of lender size.) As a result of this analysis, SBA estimates that about 4,250 of its 4,500 lending participants have SBA assets of less than \$10 million and, for the purposes of RFA, may be considered small lenders and could potentially benefit annually from SBA's reduced guaranty fees. However, SBA notes that these 4,250 small lenders approved only about 11,000 SBA loans in FY 2002 or an average of about 2.6 each. (SBA's analysis indicates that its 250 largest lenders accounted for approximately 41,000 loans or 84 percent of SBA's loan volume.)

For loans of \$150,000 or less, SBA estimates that the one percent reduction in SBA's guarantee fee in FY 2002 saved the 4,250 small lending entities about \$3.9 million in the aggregate or an average of about \$900 each. For loans greater than \$150,000 up to \$700,000, SBA estimates that the .5 percent reduction in SBA's guarantee fee in FY

2002 saved small lending entities about \$9.3 million in the aggregate or an average of about \$2,200 each. However, while the potential total savings to these entities as a result of the reductions in the SBA guarantee fee in FY 2002 was approximately \$13 million, or about \$3,100 each, lenders generally pass the cost of the SBA guarantee fee on to the small business borrowers. As a consequence, SBA anticipates that its reduced guarantee fee also generally is passed on to borrowers. As a result, SBA estimates the actual monetary impact on small lending entities due to the reduced SBA guarantee fee will not be significant. (The SBA estimates that approximately 47,000 of its 52,000 borrowers in FY 2002 benefited from the reduced guarantee fee with savings that ranged from less than \$100 up to several thousand dollars each, depending on the size of the loan.)

Section 6 also reduces SBA's annual servicing fee from 0.5 percent to .25 percent of the outstanding balance of the SBA guaranteed portion of a loan, which is a fee paid by lenders and cannot be passed on to SBA borrowers. The SBA thus estimates that the approximately 4,250 small lending entities that approved about 11,000 SBA loans in FY 2002 saved an estimated total of \$3.8 million in SBA servicing fees as a result of the reduced servicing fee, which comes to an average savings of about \$900 each.

Based on this analysis, SBA certifies that within the meaning of RFA, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 120

Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—[AMENDED]

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), and 697(a)(2).

■ 2. Amend § 120.220 by redesignating paragraphs (a) and (f) as (a)(1) and (f)(1), revise newly designated paragraphs (a)(1) and (f)(1), and by adding paragraphs (a)(2) and (f)(2) to read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(a) *Amount of guarantee fee.*

(1) *In general.* Except to the extent paragraph (a)(2) of this section applies, for a loan with a maturity of twelve (12) months or less, the guarantee fee which

the Lender must pay to SBA is one-quarter ($\frac{1}{4}$) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 2 percent of the guaranteed portion of a loan if the total amount of the loan is not more than \$150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than \$150,000 but not more than \$700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total loan amount is more than \$700,000.

(2) *For loans approved October 1, 2002, through September 30, 2004.* For a loan with a maturity of twelve (12) months or less, the guarantee fee which the Lender must pay to SBA is one-quarter ($\frac{1}{4}$) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guarantee fee is:

(i) 1 percent of the guaranteed portion of the loan if the total loan amount is not more than \$150,000,

(ii) 2.5 percent of the guaranteed portion of a loan if the total loan amount is more than \$150,000, but not more than \$700,000, and

(iii) 3.5 percent of the guaranteed portion if the total loan amount is more than \$700,000.

* * * * *

(f) *Lender's annual service fee payable to SBA.*

(1) *In general.* Except to the extent paragraph (f)(2) of this section applies, the lender shall pay SBA an annual service fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

(2) *For loans approved from October 1, 2002, through September 30, 2004.* The lender shall pay SBA an annual service fee equal to 0.25 percent of the outstanding balance of the guaranteed portion of each loan. The service fee cannot be charged to the Borrower. SBA may institute a late fee charge for delinquent payments of the annual service fee to cover administrative costs associated with collecting delinquent fees.

Dated: September 24, 2003.

Hector V. Barreto,
Administrator.

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