

## Updates to SBA Form 159, the Fee Disclosure and Compensation Agreement

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On September 14, 2018, the Small Business Administration (SBA) released a revised version of its Fee Disclosure and Compensation Agreement, more commonly known as Form 159. This form is used in the cases of both 7(a) and 504 loan programs to gather information about agents involved in the execution of these loan transactions and the specifics of how these agents are compensated. The SBA will continue to accept the previously approved version of Form 159 until November 1, 2018 when the revised version takes full effect.

The revised Form 159 includes new instructions that more clearly identify the parties required to complete it and provides a more user-friendly format. However, the most significant change to Form 159 concerns agents and SBA lenders. Agents can no longer be compensated by both loan applicants and SBA lenders for the same service. Agents employed by SBA lenders must be paid by SBA lenders and the cost of such services cannot be passed on to loan applicants. Agents must also disclose compensation charged or paid by loan applicants or SBA lenders and not just loan applicants. The revised Form 159 also mandates that:

- Loan applicants not sign the Form 159 until all services and fee information are disclosed;
- SBA lenders refund to the loan applicant any portion of fees charged in connection with the loan application in the event the SBA deems such fees unreasonable or prohibited;
- SBA lenders consult the System for Awards Management's (SAM) Excluded Parties List System, or any successor system, to ensure that an agent is not debarred by the federal government from participating in the loan transaction;
- SBA lenders not charge standardized fees and that any fees charged to loan applicants comply with SBA Loan Program Requirements;
- Agents refund to the loan applicant any portion of fees charged in connection with the loan application in the event the SBA deems such fees unreasonable or prohibited;

Agents are reminded that supporting documentation and a detailed explanation of work performed are required where compensation exceeds \$2,500, even where that compensation is charged on a percentage basis.