

**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](mailto: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.