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Business Lending News

## REVISITING SBA FORM 159: A 'HOW-TO' GUIDE

### REMINDER: IT'S CRITICAL TO COMPLY!

**Some Background.** For as long as we can all remember - and continuing with [SOP 50 10 5 \(I\)\\*](#) - an SBA small business loan applicant or the lender must complete SBA Form [159\(7a\)](#). Its provisions include a requirement to identify the names of "...Agents engaged by or on behalf of the Applicant for the purpose of expediting the application and the fees to be paid to any such person."

Form 159's importance ramped up with the [OIG's Audit Report: Improvement is Needed in SBA's Oversight of Lender Service Providers](#) published in March 2015, which called for more stringent monitoring of SBA lenders who retain 3<sup>rd</sup> party agents. Form 159 spells it out: "'Agent' includes a loan packager, referral agent, broker, accountant, attorney, consultant or any other party that receives compensation from representing an Applicant or the lender - depending on who paid or will pay the Agent - in connection with an SBA loan."

Further, lenders are responsible for consulting the System for Award Management's (SAM)/Excluded Parties List System (EPLS) or any successor system to determine if an agent has been debarred, suspended or otherwise excluded by SBA or another federal agency. (Note: To access SAM you need Internet Explorer IE11 or higher or use another browser type, i.e., Chrome, Firefox, Safari.)

*And importantly, "Violation by an Agent or the Lender of any of these rules may result in SBA's suspension or revocation of the privilege of conducting business with SBA."*

**Now, How-To.** Before agent services are provided, lenders must advise the applicants that they are not required to obtain or pay for unwanted services. When fees are charged, then SBA Form 159 must be completed. Important to remember:

- Each SBA Form 159 must be signed by the agent, applicant, and lender.
- Lenders must obtain a separate Form 159 from each agent.
- Total compensations exceeding \$2,500 must have an itemization attached.
- Some parties are exempt from filling out Form 159. Parties not considered agents for the purpose of filling out SBA Form 159 include:
  - accountant who prepares financials required by the applicant during normal course of business and not related to the loan application;
  - appraiser employed by lender to appraise collateral in connection with an SBA loan;
  - documentation preparation for closing an SBA loan;
  - appraiser/employee conducting a business valuation in connection with an SBA loan;
  - attorney used in connection with SBA loan closing;

- real estate agent who receives a commission for the sale of real property in connection with an SBA loan;
- Lender service provider operating under an SBA-approved lender service provider agreement.

**Remember!** All SBA Form 159s must be submitted to Colson once the initial disbursement is made on the loan and in conjunction with your monthly 1502 Report. Fax to 718.315.5170.or email [Form159@colsonservices.com](mailto:Form159@colsonservices.com). Retain the original signed version in your files. This is a required document during any PARRiS Targeted Review. It's also important to keep the email confirmation of your email submission with your Form 159, as SBA may request it during a Targeted Review.

At JRB we continually monitor these issues and have covered them in our eBulletins over time. Check out our eBulletin Archives for [Choosing a Loan Review Provider: Doing Due Diligence](#) and [What's an SBA LSP Agreement?](#) We're here to assist you with every facet of SBA lending. [Contact JRB.](#)

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\*See SOP 50 10 5 (I) Subpart B, Chapter 3, Items VIII-X, pgs. 142-146.