



@WBD Lender Services – Fall 2018 Newsletter - WBD SBA ProTip

The U.S. Small Business Administration (SBA) recently announced the publication of a **revised SBA Form 159**, “Fee Disclosure and Compensation Agreement.” SBA Lenders must use the new Form 159 for all applications dated on/after **November 1, 2018** regardless of whether those applications are processed under Delegated or Non-delegated methods. An explanation to the changes to the update Form may be found in [Information Notice 5000-18012](#).

The purpose of Form 159 is to identify Agents and the fees/compensation paid to Agents by, or on behalf of, a small business Applicant for the purpose of obtaining/expediting an SBA loan application. Agents may not be compensated by both Applicant and SBA Lender for the same service. SBA defines Agents as authorized representatives of Applicants, including Attorneys, Accountants, Consultants, and any person representing an Applicant by conducting business with SBA.

Another type of Agents is a Packager. A Packager could include the SBA Lender that is providing loan packaging services for a specific SBA loan application on behalf of their Applicant.

The last type of Agent is a Lender Service Provider (LSP). In most cases, the LSP is providing SBA lending services directly to the Lender. SBA reviews a written agreement between the Lender and the LSP, and therefore, Form 159 is not required for the services provided by the LSP to the Lender. **And while this is a benefit in terms of completing Form 159, SBA strongly reminds Lenders that fees it pays to an LSP under an LSP Agreement may not be passed onto the Applicant.** In situations where the LSP is performing services directly for the benefit of the Applicant, Form 159 must be used to identify the services and related fees.

Fees paid for the following application assistance that must be disclosed on Form 159:

1. Loan packaging services performed by an SBA Lender or other third party;
2. Financial statement preparation specifically for the loan application; and/or
3. Consulting, Broker, or Referral services paid by the Applicant or SBA Lender.

When completing Form 159, the Agent must be identified, all services provided must be listed, and the party paying the fee and amount paid must also be disclosed, and itemized when fee exceeds \$2,500. The SBA Lender must ensure that the Agent performing services is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency by conducting a name-search at www.sam.gov.

Fees for packaging/other services may be based on a percentage of the loan, or charged on an hourly basis. **It is not acceptable for Agents, including SBA Lenders, to charge Applicants a standard/flat fee for SBA services rendered.** If the compensation paid exceeds \$2,500, whether charged as a percentage of the loan or on an hourly

basis, the Agent must provide supporting documentation that supports the work performed and the time spent on each activity. **Lenders, please be aware that “SBA, in its discretion, may request an itemization and supporting documentation for any fee charged in connection with an SBA loan application, regardless of the amount.”** This means that you may want to institute a “best practice” of itemizing all loan packaging fees, even if those fees are at \$2,500 or less, in case SBA ever asks for the itemization.

All SBA Lenders must retain the original Form 159 in the loan file. All 7(a) Lenders must submit a copy of each completed Form 159 to Colson Services, SBA’s fiscal transfer agent, in conjunction with the Lender’s monthly 1502 report after there has been an initial disbursement on the loan. Lenders must ensure that the supporting documentation for services provided is attached to Form 159.

SBA Lenders are reminded that they must inform the Applicant in writing that the Applicant is not required to employ an Agent, including the SBA Lender, to assist the Applicant with its SBA loan application. Many Lenders provide this notification to the Applicant early on in the loan application process, many times within the written general loan application materials that the Lender provides to all potential Applicants. Lenders are advised to retain a copy of the information provided to the Applicant within the Applicant’s loan file.