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RIN 3245–AG74

Express Loan Programs; Affiliation Standards—Rescission

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; rescission.

SUMMARY: The Small Business Administration (SBA) is publishing this rule to rescind the regulations published on February 10, 2020, in the interim final rule (IFR) titled, ''Express Loan Programs; Affiliation Standards'' (Express IFR). This action is necessary to implement section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which permanently rescinded the interim final rule effective March 27, 2020. As a result of the rescission, SBA is removing the amended regulations added by the Express IFR and reinstating the regulations that were in effect before the rule became effective on March 11, 2020.

DATES: This rule is effective on March 27, 2020, as authorized by Public Law 116–136, sec. 1102(e).

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SUPPLEMENTARY INFORMATION:

I. Background Information

The SBA programs affected by the rescission of the Express IFR are:

1. The 7(a) Loan Program authorized pursuant to section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a));

2. The Business Disaster Loan Programs (collectively, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Physical Disaster Business Loans) authorized pursuant to section 7(b) of the Act (15 U.S.C. 636(b));

3. The Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m));

4. The Intermediary Lending Pilot (ILP) Program authorized pursuant to section 7(l) of the Act (15 U.S.C. 636(l));

5. The Surety Bond Guarantee Program authorized pursuant to part B of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*); and

6. The Development Company Program (the 504 Loan Program) authorized pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*).

(In this final rule, the 7(a), Microloan, ILP, and 504 Loan Programs are collectively referred to as the Business Loan Programs.)

On September 28, 2018, SBA published a proposed rule with request for comments in the **Federal Register** to incorporate the requirements related to the SBA Express and Export Express Loan Programs; add a regulation pertaining to the 7(a) and Development Company (504) loan programs regarding when the owners of a small business Applicant are required to inject excess liquid assets into the project; amend certain regulations setting forth the affiliation principles applicable to SBA financial assistance programs; limit certain fees payable by loan Applicants to amounts deemed reasonable by SBA; clarify the responsibility of a Lender for the contingent liabilities associated with 7(a) loans purchased from the Federal Deposit Insurance Corporation; and, finally, amend certain regulations governing the use of microloan grant funds by Microloan Intermediaries and the maximum maturity of a microloan. (83 FR 49001) The original comment period was scheduled to end November 27, 2018. On November 16, 2018, SBA announced an extension of the public comment period for an additional 15 business days to December 18, 2018. (83 FR 57693)

On February 10, 2020, SBA published the Express IFR with a request for comment to provide the public with an additional opportunity to comment on the modifications to the rule. (85 FR 7622). The interim final rule became effective on March 11, 2020, except that compliance with two of the regulatory provisions, 13 CFR 103.5(b) (Fees an Agent may charge a Borrower) and 13 CFR 120.221(a) (Fees a Lender may charge a Borrower) was delayed until October 1, 2020.

On March 27, 2020, President Trump signed into law, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, 134 Stat 281). Section 1102(e) of that Act permanently rescinded the Express IFR effective March 27, 2020. In light of this rescission, SBA is issuing the amendments identified below to remove all of the regulations that were added by the interim final rule and restore the regulations that were in effect prior to the effective date of the Express IFR. For loans made between March 11, 2020, and March 27, 2020, SBA Lenders should have complied with the regulations in effect during that period.

II. Waiver of Notice and Comment and Delayed Effective Date

Agencies ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the rule takes effect in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, an agency can waive this notice and comment procedure if it finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of its findings and reasons in the notice. 5 U.S.C. 553(b)(B).

This rule is rescinding an interim final rule that was developed using the APA notice and comment procedures. Because Congress has rescinded those regulations, they no longer have any legal effect, and their continued inclusion in the Code of Federal Regulations would not only be in violation of a statutory mandate, it would lead to public confusion as well. It is also unnecessary and contrary to the public interest to subject the regulations that will be reinstated to APA notice and comment procedures, since they too were already subject to public scrutiny when they were initially codified in the Code of Federal Regulations. Therefore, SBA finds that good cause exists to forgo public notice and comment procedures because they

would be unnecessary and contrary to the public interest.

In addition, section 553(d) of the APA generally requires a 30-day delay in the effective date of a final rule after the date of its publication in the **Federal Register**. This 30-day delay in effective date can also be waived as provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d)(3). Based on the language in section 1102(e) of the CARES Act, the rescission of the Express IFR was effective as of March 27, 2020. Thus, the rule cannot be delayed for 30 days; to do so would be an unauthorized extension of the rescission date. This statutorily determined effective date provides the good cause to waive the 30-day delay in effective date.

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB determined that the interim final rule, entitled Express Loan Programs; Affiliation Standards, was a significant rule for purposes of this Executive order. Accordingly, SBA prepared the requisite regulatory impact analysis, which was published with the rule. OMB has determined that this rescission of the interim final rule is also a ''significant'' rulemaking. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

The rescission of the interim final rule removes the regulations that were added by the interim final rule, including those pertaining to the SBA Express and Export Express Loan Programs, in compliance with section 1102(e) of the CARES Act, which permanently rescinded the interim final rule effective March 27, 2020.

The primary objective of the interim final rule was to incorporate into the regulations governing the 7(a) Loan Program the requirements specifically applicable to the SBA Express and Export Express Loan Programs in order to provide additional clarity for SBA Express and Export Express Lenders. The interim final rule provided a bright-line test for SBA Lenders on how to adequately determine whether a small business had access to credit elsewhere based on personal liquid assets. It modified regulatory provisions related to allowable fees that a Lender or an Agent may collect from an Applicant for financial assistance. The interim final rule also revised affiliation principles for the financial assistance programs. SBA expected that the additional detailed clarity on the requirements for program delivery in the subject areas of the interim final rule would have increased understanding for program users, decreased time spent evaluating small business Applicants, and resulted in a reduction of overall cost to participants. SBA did not expect, however, that the interim final rule would affect loan volume significantly. The interim final rule changes for affiliation determinations provided detailed guidance for the SBA Lender charged with determining the size of a small business Applicant, with an expected benefit for the SBA Lender from the time savings in making the eligibility determination. These changes are rescinded with this rule.

This rescission rule transforms the benefits of the interim final rule into forgone benefits and the costs of the interim final rule into forgone costs.

Forgone Benefits to SBA Lenders, Applicants, and Agents

The greatest benefit from the interim final rule to all program participants, including SBA Lenders, Applicants, and Agents, was clear regulatory guidance and bright-line tests to increase efficiency, including bright-line tests for making certain determinations about eligibility which would have eliminated the ambiguity and uncertainty that had hindered some SBA Lenders in recent years. SBA estimated that the reinstatement of the personal resources test at § 120.102 would have saved SBA Lenders a total of approximately 67,000 hours annually, monetized to $2,456,890 per year. This estimated annual benefit is forgone with the rescission of the interim final rule.

TABLE 1—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS FROM PERSONAL RESOURCES TEST IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in determining credit elsewhere	67,000	1–2	67,000–134,000 hours, $2,456,890–$4,913,780.
Estimated Forgone Annual Benefit			67,000–134,000 hours, $2,456,890–$4,913,780.[1]

The interim final rule set clear limitations on fees that an Agent or

[1] SBA arrived at this estimate by inquiring with various SBA Lenders as to the average time required to determine an Applicant's access to credit elsewhere. SBA calculated the average of the timeframes provided to estimate the range of time the personal resources test would have saved SBA Lenders, on average, in their analysis. Since each loan is required to address an Applicant's access to credit elsewhere, the number of expected occurrences per year was estimated by using the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The number of expected occurrences per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

[2] SBA arrived at this estimate by inquiring with various SBA Lenders as to the average time required to determine the reasonableness and permissibility of all fees charged to an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders would have saved, on average, in determining permissible and reasonable fees with the bright-line tests included in the interim final rule, which SBA estimated would be the same for an Agent. The number of expected occurrences per year for SBA Lenders was estimated based on the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The total number of guaranteed loans was used, versus the number of loans identified to have charged fees as discussed in the preamble of the interim final rule, because SBA Lenders must review every loan application to determine whether any fees were charged to an Applicant and, if so, whether the fees are permissible and reasonable. Because Agents are not involved in every SBA-guaranteed loan, the number of expected occurrences per year for Agents was estimated based on averaging the total number of loans identified to have used an Agent (other than the participating Lender) in fiscal years 2013–2017. The number of expected occurrences per year for 7(a) Lenders no longer being required to itemize fees was based on the average number of 7(a) loans guaranteed over the most recent five fiscal years. The number of expected occurrences per year for each outcome was multiplied by the average time

Lender could have charged an Applicant and left no question as to what fees SBA considered to be reasonable. Further, the interim final rule's revisions to the definitions of Agents and Associates of Lenders and CDCs provided clarity for SBA's determination of an Agent and what services the different types of Agents may have performed for compensation by the Applicant or the SBA Lender. This would have saved SBA Lenders and Agents time in making these determinations for each loan. In addition, the rule changed requirements for 7(a) Lenders to itemize fees and submit the itemization to SBA, which also would have saved these Lenders time. Applicants would have benefitted from protection against impermissible or unreasonable costs for assistance with obtaining an SBA-guaranteed loan. Benefits from these changes are forgone with the rescission of the interim final rule.

TABLE 2—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND AGENTS FROM FEE LIMITS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency for SBA Lenders when determining permissibility and reasonableness of fees.	67,000	0.5–1	33,500–67,000 hours, $1,228,445–$2,456,890.
Increased efficiency for Agents when determining permissibility and reasonableness of fees.	1,605	0.5–1	803–1,605 hours, $29,446–$58,855.
Increased efficiency for 7(a) Lenders no longer required to itemize fees.	60,951	0.5–1	30,476–60,951 hours, $1,117,555–$2,235,073.
Estimated Forgone Annual Benefit			64,779–129,556 hours, $2,375,446–$4,750,818.[2]

The interim final rule modified principles of affiliation for the financial assistance programs, increasing efficiency for the Agency and SBA Lenders in providing financial assistance only to businesses determined to be small. The benefits from this modification are forgone with rescission of the interim final rule.

TABLE 3—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND SURETIES FROM MODIFIED PRINCIPLES OF AFFILIATION IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in determining affiliation	77,000	2–4	154,000–308,000 hours, $5,647,180–$11,294,360.
Estimated Forgone Annual Benefit			154,000–308,000 hours, $5,647,180–$11,294,360.[3]

SBAexpected these benefits to have been realized upon enactment of the interim final rule and to have remained the same each year thereafter, subject to changes in number of loans and hourly rates. These benefits are forgone with rescission of the interim final rule.

Like the program participants, SBA would have benefitted from the clear regulatory guidance and bright-line tests included in the interim final rule, especially when performing lender oversight activities. Specifically, the Office of Credit Risk Management (OCRM) would have realized increased efficiencies in conducting loan file reviews of SBA Lenders. With the reinstatement of the personal resources test, clear limitations on fees an Agent or Lender could have charged an Applicant, revised definitions of Agents and Associates of Lenders and CDCs, and revised affiliation principles, SBA had removed the subjectivity of a Lender's assessment of these issues in the interim final rule, which would have improved SBA Lenders' compliance and allowed OCRM to develop more efficient methods of testing SBA Lenders' compliance. In addition, the removal of the requirement that a Lender itemize fees charged to an Applicant when the fee is over $2,500 would have reduced the burden on OCRM of reviewing these additional documents.

saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

[3] SBA arrived at this estimate by inquiring with various Lenders as to the average time required to determine affiliation. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders will save, on average, in determining affiliation based on the guidance provided in the interim final rule. Since an affiliation determination must be made for each application for SBA financial assistance, the number of expected occurrences per year for SBA Lenders and Sureties was estimated by using the average number of 7(a) and 504 loans and the average number of Bid and Final Bonds guaranteed during the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports and information on surety bonds entered into SBA's Capital Access Finance System. The total number of expected occurrences for loans and surety bonds per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

TABLE 4—ESTIMATED ANNUAL BENEFIT TO SBA FROM THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in reviewing credit elsewhere assessment.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Increased efficiency in reviewing fees charged to Applicants.	1,300	0.5–1	650–1,300 hours, $23,888–$47,775.
Increased efficiency in reviewing Lender's affiliation determination.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Estimated Forgone Annual Benefit			1,650–3,300 hours, $60,638–$121,275.[4]

SBA expected these benefits to be realized immediately upon enactment of the rule and to have remained the same each year thereafter, subject to changes in the number of loan files reviewed and hourly rates. These benefits are forgone with rescission of the interim final rule.

Costs to SBA Lenders, Applicants, and Agents

For purposes of the Regulatory Impact Analysis (RIA), the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule were administrative costs. Administrative costs considered included estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. It is noted that program participants are presumed to incur such administrative costs continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f). The Table below shows the estimated administrative costs attributable to the interim final rule, which were expected to occur mainly in the first year of implementation, decrease by half in the second year, and be eliminated by the third year. These costs are forgone with rescission of the interim final rule.

TABLE 5—ESTIMATES OF ADMINISTRATIVE COMPLIANCE COSTS TO SBA LENDERS AND AGENTS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

	Amount of time required (hours)	Value of time	Frequency for first year	Number of SBA lenders/ agents affected	Total forgone cost
Read and interpret the regulation	2–3	$36.67	5–7	3,500	35,000–73,500 hours, $1,283,450–$2,695,245.
Develop or Revise Internal Policies and Procedures.	5–7	$36.67	5–6	3,500	87,500–147,000 hours, $3,208,625–$5,390,490.
Training	5–8	$36.67	10–12	3,500	175,000–336,000 hours, $6,417,250–$12,321,120.
Estimated First Year Forgone Administrative Costs					297,500–556,500 hours, $10,909,325–$20,406,855.[5]

Costs to SBA

There were no expected additional costs to the Agency required to achieve

[4] SBA developed this estimated annual benefit based on an estimate from OCRM on the range of time that the guidance and bright-line tests included in the interim final rule would have saved a Financial Analyst, on average, in reviewing each relevant element of an SBA Lender's analysis during OCRM-conducted loan file reviews. The number of expected occurrences per year was based on the approximately 2,000 loan files reviewed by OCRM annually. The SBA Lender is required to address credit elsewhere and affiliation on every loan, but fees are not charged in connection with every loan. OCRM estimates that in approximately 65 percent of the 2,000 loans reviewed annually, OCRM identifies an issue related to fees charged to Applicants by SBA Lenders and/or Agents, including underreporting, inaccurate reporting, or impermissible fees. The number of expected occurrences per year for each outcome was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost estimate was obtained by multiplying the hourly rate of a GS–13, Step 1 ($36.75 per hour) by the number of expected occurrences per year and the average time saved per occurrence.

[5] SBA developed the estimate for the administrative costs in the first year of the final rule based on the approximate number of active SBA Lenders and Agents. Although approximately 4,500 Lenders have executed agreements to participate as a 7(a) Lender, over the past two fiscal years, the average number of active Lenders has totaled only 1,958. (A 7(a) Lender is considered to be ''active'' if it has approved at least one 7(a) loan in that fiscal year.) SBA estimated that only those Lenders actively participating in the program would have been affected by the costs of the interim final rule since the estimated costs are strictly administrative. The number of SBA Lenders and Agents affected included approximately 2,474 active SBA Lenders (including approximately 2,061 active 7(a) Lenders, 213 CDCs, 135 Microloan Intermediaries, 33 ILP Intermediaries, and 32 Sureties), plus approximately 1,018 Agents identified as having conducted business with SBA during fiscal years 2013–2017, rounded up to the next hundred to account for trade associations, and other resource partners. SBA estimated that on average between 5–7 employees at each SBA Lending institution or Agent entity may have spent between 2–3 hours each reading and interpreting the rule in the first year and that these employees are compensated at the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics ($36.67). SBA also estimated that 5–6 employees on average may have been involved in developing or revising the internal policies of the respective program participant and would likely have spent between 5–7 hours updating policies specifically related to the interim final rule. Finally, SBA estimated that between 10–12 employees on average for each program participant would have spent between 5–8 hours on training related to updates and modifications made by the interim final rule. Applicants were not included as an

the outcomes of the interim final rule. The administrative costs considered for the loan program participants, including reading and interpreting the regulation, developing and revising internal policies and procedures, and training are already inherent requirements of SBA employees and therefore, the publication of this interim final rule had no additional bearing on the responsibilities of relevant SBA employees involved in the Agency's loan programs. SBA determines that the Agency bears no costs from rescission of the interim final rule.

Transfers

SBA identified a transfer of costs, due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against Agents providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application. These changes in the interim final rule would have provided a cost savings to Applicants; however, the Agency acknowledged that this savings to the Applicant would have resulted in a cost (''transfer'') to the small number of Agents and Lenders that reported charging fees in excess of the limits imposed by the interim final rule. This transfer is forgone with the rescission of the interim final rule.

TABLE 6—ESTIMATED TRANSFERS OF COSTS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average money saved per occurrence	Total forgone transfer
Elimination of fees exceeding set limits	746	$2,380.75	$1,776,042.63
Estimated Forgone Annual Transfer			1,776,042.63[6]

Below is a table showing an estimation of the total forgone costs and forgone benefits of the interim rule over three years.

TABLE 7—ESTIMATED UNDISCOUNTED BENEFITS AND COSTS SCHEDULE IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Forgone benefits		Forgone costs	
Low estimate	High estimate	Low estimate	High estimate
Year 1			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	297,500 hours, $10,909,325	556,500 hours, $20,406,855.
Year 2			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	148,750 hours, $5,454,662.50	278,250 hours, $10,203,427.50.
Year 3			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	0 hours, $0	0 hours, $0.

Below is a table showing the annualized values of the forgone estimated costs and cost savings, as of 2016, over an infinite horizon, based on the interim final rule's estimates of these annualized values.

TABLE 8—ANNUALIZED VALUES AS OF 2016 OVER AN INFINITE HORIZON

	Primary estimate			
	3% discount rate		7% discount rate	
	Low estimate	High estimate	Low estimate	High estimate
Forgone Annualized Cost Savings	$9,806,751	$19,613,433	$9,806,754	$19,613,433
Forgone Annualized Costs	485,479	908,132	1,077,116	2,014,841
Forgone Annualized Net Cost Savings	9,321,272	18,705,301	8,729,638	17,598,592

entity affected by the administrative costs of the rule, as the Applicant relies on the SBA Lender or third-party Agent to inform them of SBA policy and procedure.

[6] SBA arrived at this estimate based on the total number of loans guaranteed between FY2013 and FY2017 that reported fees charged to an Applicant by an Agent or Lender over the limits imposed in the interim final rule and the total amount that those fees on those loans exceeded the imposed limit for each threshold.

Executive Order 12988

This rule 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 rule has no preemptive effect but consistent with section 1102(e) of the CARES Act, which made the rescission of the regulations effective on March 27, 2020, the rule necessarily has retroactive effect.

Executive Order 13132

SBA has determined that this rule 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 has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This rescission is considered an E.O. 13771 regulatory action. SBA determines that the estimated $12,633,634 in annualized savings from the interim final rule using a 7% discount rate in perpetuity in 2016 dollars is forgone with this rescission. In addition, SBA determines that the estimated present value of savings in perpetuity from the interim final rule of $180,480,486 is forgone with this rescission. Details on the breakdown of the estimated cost savings of this interim final rule can be found in the rule's economic analysis.

Paperwork Reduction Act, 44 U.S.C. 3501–3521

The Express IFR required modification to reporting or recordkeeping requirements contained in several SBA forms: Form 1920, Lender's Application for Guaranty (OMB Control number 3245–0348); Form 2450, Eligibility Information Required for 504 Submission (Non-PCLP) (OMB Control number 3245–0071); Form 2234 (Part C), Eligibility Information Required for 504 Submission (PCLP) (OMB Control number 3245–0346); and Form 159, Fee Disclosure and Compensation Agreement (OMB Control number 3245–0201).

Since publication of the Express IFR, SBA has cancelled Form 2234 and Form 2450. With respect to Form 1920 and Form 159, none of the proposed changes had been finalized and submitted to OMB for approval prior to enactment of the CARES Act; therefore, no action is required as a result of the rescission of the Express IFR. In addition, the Express IFR codified an existing requirement for Small Business Lending Companies (SBLCs) to annually submit to SBA the validation of any credit scoring model they use in connection with SBA Express and Export Express loans. Since the reporting requirement was already included in an approved information collection, SBA Lender Reporting Requirements (OMB Control Number 3245–0365), no amendment was required. As a result, the rescission of the rule does not impact SBLCs' duty to report.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rule, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment a final regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows the head of an agency to certify a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, in lieu of preparing an analysis.

Small entities likely to be affected by the rescission of the interim final rule include small SBA Lenders and small Agents who assist small business Applicants with obtaining SBA-guaranteed financing. Other entities that provide services to an Applicant for obtaining SBA-guaranteed financing include individuals who may assist with packaging a loan application or assisting the Applicant with finding an SBA Lender, entities formed for the purpose of providing such assistance, attorneys, and Certified Public Accountants. The RIA of the interim final rule estimated that approximately 3,207 small entities would be affected. The rescission of the interim final rule also affects these 3,207 small entities.

As described more fully in the RIA, SBA determined that the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule were administrative costs, which are forgone with the rescission. Administrative costs considered include estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. Although these costs were estimated for the purposes of the Regulatory Flexibility Act for the interim final rule, it is important to note that, regardless of any new rulemaking, program participants are presumed to incur administrative costs related to reading and interpreting SBA Loan Program Requirements, revising and updating internal policies, and training staff continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f). SBA determines that the rescission of the interim final rule causes these costs to be forgone.

The RIA for the interim final rule identified an estimated transfer of costs due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against an Agent providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application. The Agency acknowledged that any savings to the Applicant from these limitations in the interim final rule would have resulted in a potential loss of revenue to the small number of Agents and Lenders that reported charging fees in excess of the limits. With the rescission of the interim final rule, these transfers are forgone.

To estimate the average annualized forgone cost per small entity in the interim final rule, SBA annualized the sum of all administrative costs plus the estimated potential loss of revenue (*e.g.,* the total transfer amount of $1,776,042.63) identified in the RIA (see Table 6 in the RIA). The estimated total annualized costs, which are forgone with the rescission, over 10 years at a 7 percent discount rate range from a low estimate of $2,773,295.70 to a high estimate of $4,331,035. Dividing the total estimated annualized costs by the 3,207 estimated small entities affected, the forgone annualized cost per entity with the rescission is estimated to be between approximately $864.76 and $1,350.49. Although SBA was unable to ascertain the NAICS codes of all types of entities considered to be Agents for estimation purposes in the interim final rule, SBA used data from the 2012 U.S. Census Bureau's SUSB for NAICS code 522310 for Mortgage and Nonmortgage Loan Brokers as an example to examine the annualized compliance cost as a percentage of annual receipts for small entities classified by this NAICS code. For the purposes of this estimation in the interim final rule, SBA averaged the high and low estimates of the annualized cost for a mid-point total of $388 per entity. This annualized cost per entity is forgone with the rescission of the interim final rule.

MORTGAGE AND NONMORTGAGE LOAN BROKERS (NAICS 522310)—$7.5 MILLION SIZE STANDARD

Firm size (by receipts)	Average annual receipts	Annualized forgone cost per firm	# of firms	% of small firms	Revenue test* (%)
All Firms	1,005,967	388	7,007	N/A	0.0
Small Firms	549,802	388	6,817	100	0.1
<$100K	48,038	388	1,533	22	0.8
100K–499,999	250,730	388	3,233	47	0.2
500,000–999,999	693,276	388	1,042	15	0.1
1,000,000–2,499,999	1,482,997	388	721	12	0.0
2,500,000–4,999,999	3,244,231	388	216	3	0.0
5,000,000–7,499,999	5,157,764	388	72	1	0.0

* Annualized compliance costs as a percentage of annual receipts.

SBA has determined that forgoing the annualized cost per entity of the interim final rule by its rescission will not have a significant economic impact on a substantial number of small entities. The average annualized cost in the example above is not a significant percentage of each entity's average annual revenue for any size firm considered to be small. It is also noted that these forgone annualized costs are set against forgone annualized benefits ranging from a low estimate of $9,806,754 to a high estimate of $19,613,433 (or approximately $3,056–$6,116 per entity). Also, the number of small entities affected is not substantial. SBA estimated that from FY2013 through FY2017, 213 small entities (83 small Lenders and 130 small Agents) reported charging fees in excess of the limits imposed in the interim final rule. SBA does not consider 83 small Lenders to be a substantial number when compared to the overall number of small Lenders, which is approximately 2,000. With respect to small Agents, SBA does not consider 130 Agents to be a substantial number when compared to the overall number of small Agents. SBA believes the number of small entities acting as Agents in connection with the SBA loan programs is most likely much larger when taking into consideration the attorneys, accountants, business consultants and others that act as Agents. As SBA noted above, the NAICS Code for Mortgage and Nonmortgage Loan Brokers is only one of numerous NAICS codes under which Agents may be classified. Many different types of individuals and entities, including attorneys, accountants, and business consultants, act as Agents and assist Applicants in obtaining SBA-guaranteed loans. Thus, SBA believes that the actual universe of small Agents may be considerably larger than 602. When all of the potentially relevant NAICS codes are considered, SBA believes that the number of small entities affected by the rescission of the interim final rule would be even smaller than the 8% noted above.

SBA determined that the interim final rule did not have a significant impact on a substantial number of small entities. The Administrator of SBA likewise certifies that the rescission of the interim final rule has no significant impact on a substantial number of small entities.

List of Subjects

13 CFR Part 103

Administrative practice and procedure.

13 CFR Part 120

Community development, Environmental protection, Equal employment opportunity, Exports, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR parts 103, 120, and 121 as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 15 U.S.C. 634, 642.

■ 2. Amend § 103.1 by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraph (d) as paragraph (g); and
■ c. Adding a new paragraph (d) and paragraphs (e) and (f).

The revision and additions read as follows:

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an Applicant or Participant by conducting business with SBA.

* * * * *

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a ''Lender Service Provider'' on a loan-by-loan basis.

(e) *Packager* means an Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a ''Packager'' on a loan-by-loan basis.

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

* * * * *

■ 3. Amend § 103.4 by revising paragraph (g) to read as follows:

§ 103.4 What is ''good cause'' for suspension or revocation?

* * * * *

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to the ''two master'' prohibition in this paragraph (g) exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

* * * * *

■ 4. Amend § 103.5 by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

* * * * *

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the Agent or Packager must: Reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the Applicant, and refrain from charging or collecting, directly or indirectly, from the Applicant an amount in excess of the amount SBA deems reasonable.

(c) * * * However, such compensation may not be directly charged to an Applicant or Borrower.

PART 120—BUSINESS LOANS

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

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

■ 6. Amend § 120.10 by revising paragraph (1)(i) of the defined term ''Associate'' to read as follows:

§ 120.10 Definitions.

* * * * *

Associate. (1) * * *

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process; or

* * * * *

§ 120.102 [Removed and Reserved]

■ 7. Remove and reserve § 120.102.

■ 8. Amend § 120.130 by revising paragraph (c) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(c) Floor plan financing or other revolving line of credit, except under § 120.340 or § 120.390;

* * * * *

■ 9. Amend § 120.221 by:

■ a. Revising the section heading and paragraph (a); and

■ b. Removing the last sentence of paragraph (b).

The revisions read as follows:

§ 120.221 Fees and expenses that the Lender may collect from a loan applicant or Borrower.

* * * * *

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

* * * * *

§ 120.222 [Amended]

■ 10. Amend § 120.222 by adding the word ''in'' before the words ''any premium received''.

■ 11. Revise § 120.344(b) to read as follows:

§ 120.344 Unique requirements of the EWCP.

* * * * *

(b) SBA does not limit the amount of extraordinary servicing fees, as referenced in § 120.221(b), under the EWCP.

* * * * *

■ 12. Revise § 120.350 to read as follows:

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust (''ESOP'') to:

(a) Help finance the growth of its employer's small business; or

(b) Purchase ownership or voting control of the employer.

■ 13. Revise § 120.352 to read as follows:

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general purpose under section 7(a) of the Act.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.432 [Amended]

■ 14. Amend § 120.432(a) by removing the last sentence.

■ 15. Amend § 120.440 by revising paragraph (c) to read as follows:

§ 120.440 How does a 7(a) Lender obtain delegated authority?

* * * * *

(c) If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years. SBA may grant shortened renewals based on risk or any of the other delegated authority criteria. Lenders with less than 3 years of SBA lending experience will be limited to a term of 1 year or less.

■ 16. Remove the undesignated center heading ''SBA Express and Export Express Loan Programs'' that appears before § 120.441.

§§ 120.441 through 120.447 [Removed and Reserved]

■ 17. Remove and reserve §§ 120.441 through 120.447.

§ 120.707 [Amended]

■ 18. Amend § 120.707(b) by removing the word ''seven'' and adding in its place the word ''six.''

■ 19. Amend § 120.712 by:

■ a. Revising paragraph (b)(1); and

■ b. In paragraph (d), removing the number ''30'' and adding in its place the number ''25.''

The revision reads as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 25 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; and

* * * * *

■ 20. Amend § 120.840 by revising paragraph (b) to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

* * * * *

(b) *Application.* A CDC must apply for ALP status to the Lead SBA Office. The Lead SBA Office will send its recommendation and the application to the D/FA for final decision.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 21. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Public Law 116–136, Section 1114.

■ 22. Amend § 121.301 by:

■ a. Revising paragraph (f)(4);

■ b. Removing paragraphs (f)(5) and (6);

■ c. Redesignating paragraphs (f)(7) through (9) as paragraphs (f)(5) through (7), respectively; and

■ d. Revising newly redesignated paragraph (f)(5).

The revisions to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) * * *

(4) *Affiliation based on identity of interest*. Affiliation arises when there is an identity of interest between close relatives, as defined in 13 CFR 120.10, with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Where SBA determines that interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(5) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will only consider the franchise or license agreements of the applicant concern.

* * * * *

■ 23. Amend § 121.302 by revising paragraphs (a) and (b) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

(b) For the Preferred Lenders Program, size is determined as of the date of approval of the loan by the Preferred Lender.

* * * * *

Jovita Carranza,

Administrator.

[FR Doc. 2020–26450 Filed 12–11–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T; Amendment 39–21334; AD 2020–24–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. As published, the regulatory text of the AD included errors in certain references to the airplane flight manual (AFM) that is required to be revised. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This correction is effective December 18, 2020. The effective date of AD 2020–24–04 remains December 18, 2020.

ADDRESSES: You may examine the AD docket at *https://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

SUPPLEMENTARY INFORMATION: As published, Airworthiness Directive 2020–24–04, Amendment 39–21334 (85 FR 77991, December 3, 2020), requires revising the existing AFM to incorporate procedures for conducting an approach with a localizer-based navigation aid, monitoring localizer raw data, calling out any significant deviations, and performing an immediate go around if the airplane has not intercepted the final approach course as shown by the localizer deviation. AD 2020–24–04 applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes.

As published, the regulatory text included errors in certain references to the AFM that is required to be revised. The location of the AFM text to be revised is incorrectly identified as the ''Limitations section''; the correct location is the ''Operating Procedures chapter.'' In addition, the figure incorrectly identified the heading of the AFM text as ''Operating Instructions''; the correct heading is ''Autopilot Flight Director System—Operating Instructions.''

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains December 18, 2020.

Since this action only corrects errors in certain AFM references, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2020–24–04 The Boeing Company: Amendment 39–21334; Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T.

(a) Effective Date

This AD is effective December 18, 2020.

(b) Affected ADs

None.