

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 106

RIN 3245-AF37

#### Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Reauthorization and Manufacturing Assistance Act of 2004 requires the U.S. Small Business Administration (SBA or Agency) to promulgate regulations to carry out the Agency's statutory authority to provide assistance for the benefit of small business through activities sponsored with outside entities (for-profit and not-for-profit entities and Federal, state and local government officials or entities) as well as activities solely sponsored by SBA. This proposed rule implements that authority and sets forth minimum requirements for these activities as well as the Agency's solicitation and acceptance of gifts.

**DATES:** The Agency must receive comments on or before September 9, 2005.

**ADDRESSES:** You may submit comments, identified by agency name and RIN 3245-AF37, by any of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. E-mail: [robert.gangwere2@sba.gov](mailto:robert.gangwere2@sba.gov). Include RIN 3245-AF37 in the subject line of the message. Fax: (202) 205-6846. Mail or Hand Delivery/Courier: Robert Gangwere, Deputy General Counsel, U.S. Small Business Administration, 409 Third Street, SW., Suite 7200, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Robert Gangwere, Deputy General Counsel, (202) 205-6642.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

As part of its mission to assist small business entrepreneurs, SBA has long provided training and carried out marketing and outreach through SBA-sponsored activities as well as activities conducted in cooperation with:

Voluntary, business, professional, educational, and other nonprofit organizations, associations and institutions and with other Federal and State agencies  
\* \* \*

Sec. 207(e), Pub. L. 83-163, 67 Stat. 278 (1953). The Agency's statutory authority was later expanded to include for-profit organizations, referred to as cosponsors, thus giving SBA cosponsorship authority. Sec. 59, Pub. L. 98-362, 98 Stat. 431 (1984), amended by Sec. 504 (a), Pub. L. 106-554, 114 Stat. 2763 (2000) (SBA's cosponsorship authority sunsetted in fiscal year 2004). In addition, under section 8(b)(1)(A) of the Small Business Act (Act), SBA has had authority to engage in SBA-sponsored activities (referred to herein as Non-Fee Based SBA-Sponsored Activities) to "provide technical, managerial and informational aids to small business concerns." 15 U.S.C. 637(b).

The Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) was signed into law on December 8, 2004. Pub. L. 108-447, Division K, 118 Stat. 2809-644 (2004). The statute reauthorized and expanded SBA's cosponsorship authority, provided SBA with authority to conduct and charge fees for certain SBA-sponsored activities (Fee Based SBA-Sponsored Activities), and expanded SBA's authority to use certain gift funds for marketing and outreach activities. The statute also made significant changes to the approval process for outreach activities and gift acceptance. In addition, the Reauthorization Act requires the Agency to issue regulations to carry out Cosponsored and Fee Based SBA-Sponsored Activities.

With the renewal of its cosponsorship authority and the added authority for Fee Based SBA-Sponsored Activities, the Agency now has three major vehicles by which it may provide information, training, and/or conduct marketing and outreach for the benefit of or to small businesses: Cosponsored Activities, Fee Based SBA-Sponsored Activities, and Non-Fee Based SBA-Sponsored Activities.

To facilitate these activities and to implement the recent statutory changes, SBA proposes this rule adding part 106 to title 13 of the Code of Federal Regulations. The proposed regulations define each of these vehicles, identify the statutory authority underlying them, and set forth the minimum requirements applicable to each. In addition, the proposed regulations set forth minimum requirements and the conflict of interest authority for solicitation and acceptance of gifts under certain Agency gift authorities.

#### B. Section-by-Section Analysis

SBA proposes to implement the amended statutory requirements by adding part 106 to SBA's regulations. Part 106 is divided into five subparts: A, B, C, D and E. Subpart A sets forth the scope of the proposed regulations and provides definitions. The regulatory subparts B, C and D distinguish the three types of activity vehicles and clarify the specific minimum requirements for each vehicle. Subpart B specifically addresses Cosponsored Activities. Subparts C and D, in turn, relate to SBA-Sponsored Activities. To distinguish between the two authorities, SBA is calling one a Fee Based SBA-Sponsored Activity and the other a Non-Fee Based SBA-Sponsored Activity. Subpart C deals with SBA's new statutory authority that allows the Agency to provide assistance for the benefit of small business through Fee Based SBA-Sponsored Activities. Subpart D addresses the Agency's retained authority under section 8(b)(1)(A) of the Act to provide technical and managerial assistance directly to small business concerns through SBA-Sponsored Activities for which the Agency has no authority to charge participant fees. Subpart E relates to the Agency's gift acceptance authorities and sets forth minimum requirements and procedures applicable to SBA.

##### 1. Subpart A: Scope and Definitions

Subpart A contains Sections 106.100 and 101. Section 106.100 states the scope of the proposed regulations. Section 106.101 provides definitions. For clarity, the Agency has defined and distinguished the three major outreach vehicles: Cosponsored Activities, Fee Based SBA-Sponsored Activities and Non-Fee Based SBA-Sponsored

Activities. The terms "Cosponsor," "Cosponsored Activity," and "Cosponsorship Agreement" are familiar terms that have been used by the Agency under its prior cosponsorship authority. The terms have been redefined to the extent required by the expanded authority of the Reauthorization Act. The terms "Fee Based SBA-Sponsored Activity" and "Non-Fee Based SBA-Sponsored Activity" are new terms used to distinguish between the two vehicles available for SBA-Sponsored activities. Written documentation of Fee Based and Non-Fee Based SBA-Sponsored Activities are defined as Fee Based and Non-Fee Based SBA-Sponsored Activity Records. The term "Eligible Entity" is defined in the Reauthorization Act. The definitions of the remaining terms (*i.e.*, Donor, Gift, Responsible Program Official, Participant Fee) are consistent with current Agency policy.

## 2. Subpart B: Cosponsored Activities

Subpart B proposes five sections relating to SBA's cosponsorship authority. Section 106.200 mirrors the requirements of the Reauthorization Act, which expanded the purpose of Cosponsored Activities from providing training directly to small businesses to providing assistance for the benefit of small business. The Reauthorization Act also requires consultation with the Agency's General Counsel before a Cosponsored Activity is approved. Section 106.200 reiterates the Reauthorization Act and provides that the SBA Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Cosponsored Activities.

Section 106.201 outlines who is eligible to be a Cosponsor. As set forth in the Reauthorization Act, only Eligible Entities may be Cosponsors. The Agency adds a further restriction that SBA may not enter into a Cosponsorship Agreement with an otherwise Eligible Entity if the Administrator, after consultation with the General Counsel, determines that such an agreement would create a conflict of interest. This restriction is consistent with current SBA policy.

Section 106.202 sets forth the minimum requirements applicable to all Cosponsored Activities. Paragraph (a) requires a written Cosponsorship Agreement. The Agency's prior statutory authority mandated a written Cosponsorship Agreement for Cosponsored Activities with for-profit entities. In the proposed regulations the Agency maintains the requirement for a

written Cosponsorship Agreement, but for uniformity and better record keeping, broadens the requirement to all Cosponsored Activities, whether or not a for-profit entity is involved.

Paragraph (b) incorporates the statutory requirement in the Reauthorization Act that requires that appropriate recognition be given to SBA and each Cosponsor. As stated in the legislative history to the Reauthorization Act, Congress required that:

[T]he Administration \* \* \* recognize the cosponsors of such events but only to the extent of their contributions. No endorsements of the co-sponsors products or services are permitted.

Joint Explanatory Statement, "Congressional Record," H10198 (November 20, 2004).

Paragraph (c) embodies current SBA policy (which was also statutorily mandated, in part, under the Agency's prior cosponsorship authority) by requiring advance approval by SBA for all printed or electronically generated material used to publicize or conduct the cosponsored activities, including the use of a disclaimer. Paragraph (d) also incorporates current SBA policy, which prohibits Cosponsors from making a profit on any Cosponsored Activity.

Paragraph (e) is based upon the Reauthorization Act, which allows the Agency to charge participants a minimal fee to cover the cost of the Cosponsored Activity. The regulation also allows Cosponsors to charge Participant Fees. This is consistent with prior cosponsorship authority and current Agency policy and practice. The second part of paragraph (e) requiring that Participant Fees must be liquidated prior to other sources of funding is also based on current Agency policy.

Paragraph (f) continues the Agency's current practice, required under the prior cosponsorship authority, which states that SBA may not provide a Cosponsor with preexisting lists of small business concerns, otherwise protected by law or policy from disclosure. Paragraph (g) requires written approval of the Cosponsorship Agreement. This paragraph implements in part the limited delegation of authority in the Reauthorization Act and the requirement to consult with the General Counsel.

Section 106.203 provides minimum guidelines as to what provisions must be set forth in a Cosponsorship Agreement. Paragraphs (a)(d) require a written agreement with a narrative description of the activity, a list of the parties' duties and responsibilities, and a proposed budget setting forth the contributions of each Cosponsor, the

sources of funding and an estimate of anticipated expenses. Paragraphs (e) and (f) require that each Cosponsor agree in writing that they will not make a profit, that any Participant Fees charged may not exceed anticipated direct costs and that Participant Fees will be liquidated prior to other sources of funding. These provisions embody current Agency policy.

Finally, Section 106.204, implementing the requirements of the Reauthorization Act, establishes that the Administrator has the authority to approve a Cosponsorship Agreement and that such authority may only be re-delegated to the Deputy Administrator, associate administrators and assistant administrators. In the legislative history to the Reauthorization Act, Congress made clear that:

No personnel located in district or regional offices are permitted to approve cosponsorships. Congress adopted this restriction to ensure close cooperation with the General Counsel of the Administration.

Joint Explanatory Statement, "Congressional Record," H10199 (November 20, 2004).

## 3. Subpart C: Fee Based SBA-Sponsored Activity

Subpart C addresses SBA's new authority under the Reauthorization Act which allows the Agency to provide assistance for the benefit of small business through SBA-Sponsored Activities whereby the Agency may charge a Participant Fee during activities planned and conducted solely by SBA. 15 U.S.C. 633(h). Section 106.300 reiterates the Reauthorization Act and provides that the Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Fee Based SBA-Sponsored Activities.

Section 106.301 sets forth minimum requirements for Fee Based SBA-Sponsored Activities. For uniformity, these requirements, where possible, mirror the requirements for Cosponsored Activities. Section 106.301 (a) requires a written record of the activity; (b) restricts Participant Fees to anticipated direct costs of the activity; (c) subjects collection of money to U.S. Treasury rules and (d) requires advance written approval.

Section 106.302 sets forth the provisions that are required in a Fee Based Record. Again, many of these are borrowed from current Agency policies and requirements for Cosponsored Activities. SBA proposes paragraph (a) requiring a written narrative description of the activity. SBA proposes paragraph

(b) to document the commitment of the Agency official responsible for the activity to abide by all applicable laws and policies. SBA also requires that all sources and uses of funds be documented in a budget pursuant to paragraph (c), including a provision requiring that no profit be anticipated from the activity and that any Participant Fees charged will not exceed the minimal amount needed to cover the anticipated direct costs. Paragraph (d) addresses the application of any Gifts made in support of the activity and follows current Agency policies.

Finally, Section 106.303, implementing the requirements of the Reauthorization Act, establishes that the Administrator has the authority to approve and sign a Fee Based Record after consultation with the General Counsel (or designee) and that such authority may only be re-delegated to the Deputy Administrator, associate administrators and assistant administrators. This requirement is the same for Cosponsorship Agreements.

#### 4. Subpart D: Non-Fee Based SBA-Sponsored Activity

Unlike subpart C, subpart D does not represent new authority, rather it has been renamed for clarity. Section 106.400 states the authority for SBA to conduct Non-Fee Based SBA-Sponsored Activities.

Section 106.401 sets forth the minimum requirements for Non-Fee Based SBA-Sponsored Activities. Consistent with the requirements for Cosponsored and Fee Based SBA-Sponsored Activities, the regulations require a written record. In addition, in accordance with applicable law, paragraph (b) states that Gifts of cash are subject to SBA policies and U.S. Treasury rules and guidelines. Paragraph (c) requires written approval.

Section 106.402 sets forth the provisions that must be in a Non-Fee Based Record. Again, these track the requirements for Cosponsorship Agreements and Fee Based Records, except a budget is not required. SBA proposes paragraph (a) to require a written narrative description of the activity. SBA proposes paragraph (b) to document the commitment of the Agency official responsible for the activity to abide by all applicable laws and policies. Paragraphs (c) and (d) address the application of any Gifts made in support of the activity.

Finally, Section 106.403 establishes who has authority to approve a Non-Fee Based SBA-Sponsored Activity. Unlike the authority to approve Cosponsored and Fee Based SBA-Sponsored Activities, which authority is dictated

by the Reauthorization Act, Agency policy places authority to approve Non-Fee Based SBA-Sponsored Activity with the Responsible Program Official who may be an official in a district or regional office.

#### 5. Subpart E: Gifts

Subpart E has four sections which relate to the Agency's Gift acceptance authorities. Section 106.500 identifies the Agency's multiple Gift acceptance authorities. Section 106.501 sets forth minimum requirements applicable to SBA's solicitation and acceptance of Gifts. SBA proposes Section 106.501 in order to provide a uniform Gift solicitation and acceptance policy for all Gifts regardless of which authority is being used. These minimum requirements include: (a) Use of the Gift in the manner consistent with Donor intent; (b) written documentation of each Gift solicited and/or accepted; (c) a conflict of interest determination; and (d) use of the Agency's designated trust account for all cash Gifts. These provisions simply restate current Agency policies.

Section 106.502 outlines who is authorized to perform a Gift conflict of interest determination. For Gifts accepted under sections 4(g), 8(b)(1)(G), and 7(k)(2) of the Act, the conflict of interest determination must be done by the General Counsel (or designee). 15 U.S.C. 633(g). Current Agency policy requires that this conflict of interest determination be made by appropriately designated counsel in the Office of General Counsel in Headquarters. The conflict of interest determination for Gifts of services or facilities accepted under section 5(b)(9) of the Act may be made by designated disaster counsel.

Finally, Section 106.503 identifies the types of Gifts the Agency may not solicit or accept. This provision was incorporated to provide all SBA employees with a consistent understanding of existing law and Agency policy.

#### C. 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 proposed 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 proposed 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, 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. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. In this case, the proposed regulations address the administrative requirements for Agency management of SBA outreach programs. In other words, this proposed rule will not result in the direct regulation of small entities, so no further analysis is required by the RFA. Therefore, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of RFA.

#### List of Subjects in 13 CFR Part 106

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Small businesses, Intergovernmental relations.

For the reasons stated in the preamble, SBA proposes to add 13 CFR part 106, as follows:

#### PART 106—COSPONSORSHIPS, FEE AND NON-FEE BASED SBA-SPONSORED ACTIVITIES AND GIFTS

##### Subpart A—Scope and Definitions

Sec.	
106.100	Scope.
106.101	Definitions.

##### Subpart B—Cosponsored Activity

106.200	Cosponsored Activity.
106.201	Who may be a Cosponsor?

- 106.202 What are the minimum requirements applicable to Cosponsored Activities?
- 106.203 What provisions must be set forth in a Cosponsorship Agreement?
- 106.204 Who has the authority to approve and sign a Cosponsorship Agreement?

#### Subpart C—Fee Based SBA-Sponsored Activities

- 106.300 Fee Based SBA-Sponsored Activity.
- 106.301 What are the minimum requirements applicable to Fee Based SBA-Sponsored Activities?
- 106.302 What provisions must be set forth in a Fee Based Record?
- 106.303 Who has the authority to approve and sign a Fee Based Record?

#### Subpart D—Non-Fee Based SBA-Sponsored Activities

- 106.400 Non-Fee Based SBA-Sponsored Activity.
- 106.401 What are the minimum requirements applicable to a Non-Fee Based SBA-Sponsored Activity?
- 106.402 What provisions must be set forth in a Non-Fee Based Record?
- 106.403 Who has the authority to approve and sign a Non-Fee Based Record?

#### Subpart E—Gifts

- 106.500 What is SBA's Gift authority?
- 106.501 What minimum requirements are applicable to SBA's solicitation and/or acceptance of Gifts?
- 106.502 Who has authority to perform a Gift conflict of interest determination?
- 106.503 Are there types of Gifts which SBA may not solicit and/or accept?

**Authority:** 15 U.S.C. 633 (g) and (h); 15 U.S.C. 637(b)(1)(A); 15 U.S.C. 637(b)(G).

#### Subpart A—Introduction and Definitions

##### § 106.100 Scope.

The regulations in this part apply to SBA-provided assistance for the benefit of small business through Fee Based SBA-Sponsored Activities or through Cosponsored Activities with Eligible Entities authorized under section 4(h) of the Small Business Act, and to SBA assistance provided directly to small business concerns through Non-Fee Based SBA-Sponsored Activities authorized under section 8(b)(1)(A) of the Small Business Act. The regulations in this part also apply to SBA's solicitation and acceptance of Gifts under certain sections (sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2)) of the Small Business Act (15 U.S.C. 631 *et seq.*), including Gifts of cash, property, services and subsistence. Under section 4(g) of the Small Business Act, Gifts may be solicited and accepted for marketing and outreach purposes including the cost of promotional items and wearing apparel.

##### § 106.101 Definitions.

The following definitions apply to this part. Defined terms are capitalized wherever they appear.

(a) *Cosponsor* means an entity or individual designated in section 106.201 that has signed a written Cosponsorship Agreement with SBA and who actively and substantially participates in planning and conducting an agreed upon Cosponsored Activity.

(b) *Cosponsored Activity* means an activity, event, project or initiative, designed to provide assistance for the benefit of small business as authorized by section 4(h) of the Small Business Act, which has been set forth in an approved written Cosponsorship Agreement. The Cosponsored Activity must be planned and conducted by SBA and one or more Cosponsors. Assistance for purposes of Cosponsored Activity does not include grant or any other form of financial assistance. A Participant Fee may be charged by SBA or another Cosponsor at any Cosponsored Activity.

(c) *Cosponsorship Agreement* means an approved written document (as outlined in sections 106.203–04) which has been duly executed by SBA and one or more Cosponsors. The Cosponsorship Agreement shall contain the parties' respective rights, duties and responsibilities regarding implementation of the Cosponsored Activity.

(d) *Donor* means an individual or entity that provides a Gift, bequest or devise (in cash or in-kind) to SBA.

(e) An *Eligible Entity* is a potential Cosponsor. An Eligible Entity must be a for-profit or not-for-profit entity, or a Federal, State or local government official or entity.

(f) *Fee Based SBA-Sponsored Activity Record* (Fee Based Record) means a written document, as outlined in § 106.302, describing a Fee Based SBA-Sponsored Activity and approved in writing pursuant to § 106.303.

(g) *Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance for the benefit of small business, as authorized by section 4(h) of the Small Business Act, at which SBA may charge a Participant Fee. Assistance for purposes of Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA.

(h) *Gift* (including a bequest or a device) is the voluntary transfer to SBA of something of value without the Donor receiving legal consideration.

(i) *Non-Fee Based SBA-Sponsored Activity Record* (Non-Fee Based Record)

means a written document describing a Non-Fee Based SBA-Sponsored Activity which has been approved pursuant to § 106.403.

(j) *Non-Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance directly to small business concerns as authorized by section 8(b)(1)(A) of the Small Business Act. Assistance for purposes of a Non-Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Non-Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA. No fees including Participant Fees may be charged for a Non-Fee Based SBA-Sponsored Activity.

(k) *Participant Fee* means a minimal fee assessed against a person or entity that participates in a Cosponsored Activity or Fee Based SBA-Sponsored Activity and is used to cover the direct costs of such activity.

(l) *Responsible Program Official* is an SBA senior management official from the originating office who is accountable for the solicitation and/or acceptance of a Gift to the SBA; a Cosponsored Activity; a Fee Based SBA-Sponsored Activity; or a Non-Fee Based SBA-Sponsored Activity. If the originating office is a district or branch office, the Responsible Program Official is the district director or their deputy. In headquarters, the Responsible Program Official is the management board member or their deputy with responsibility for the relevant program area.

#### Subpart B—Cosponsored Activity

##### § 106.200 Cosponsored Activity.

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Cosponsored Activities pursuant to section 4(h) of the Small Business Act.

##### § 106.201 Who may be a Cosponsor?

(a) Except as specified in paragraph (b) of this section, SBA may enter into a Cosponsorship Agreement with an Eligible Entity as defined in § 106.101(e).

(b) SBA may not enter into a Cosponsorship Agreement with an Eligible Entity if the Administrator (or designee), after consultation with the General Counsel (or designee), determines that such agreement would create a conflict of interest.

**§ 106.202 What are the minimum requirements applicable to Cosponsored Activities?**

While SBA may subject a Cosponsored Activity to additional requirements through internal policy, procedure and the Cosponsorship Agreement, the following requirements apply to all Cosponsored Activities:

(a) Cosponsored Activities must be set forth in a written Cosponsorship Agreement signed by the Administrator (or designee) and each Cosponsor;

(b) Appropriate recognition must be given to SBA and each Cosponsor but shall not constitute or imply an endorsement by SBA of any Cosponsor or any Cosponsor's products or services;

(c) Any printed or electronically generated material used to publicize or conduct the Cosponsored Activity, including any material which has been developed, prepared or acquired by a Cosponsor, must be approved in advance by the Responsible Program Official and must include a prominent disclaimer stating that the Cosponsored Activity does not constitute or imply an endorsement by SBA of any Cosponsor or the Cosponsor's products or services;

(d) No Cosponsor shall make a profit on any Cosponsored Activity. SBA grantees who earn program income on Cosponsored Activities must use that program income for the Cosponsored Activity;

(e) Participant Fee(s) charged for a Cosponsored Activity may not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity and must be liquidated prior to other sources of funding for the Cosponsored Activity. If SBA charges a Participant Fee, the collection of the Participant Fees is subject to internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines;

(f) SBA may not provide a Cosponsor with lists of names and addresses of small business concerns compiled by SBA which are otherwise protected by law or policy from disclosure; and

(g) Written approval must be obtained as outlined in § 106.204 of this subpart.

**§ 106.203 What provisions must be set forth in a Cosponsorship Agreement?**

While SBA may require additional provisions in the Cosponsorship Agreement through internal policy and procedure, the following provisions must be in all Cosponsorship Agreements:

(a) A written statement agreed to by each Cosponsor that they will abide by all of the provisions of the Cosponsorship Agreement, the

requirements of this subpart as well the applicable definitions in § 106.100;

(b) A narrative description of the Cosponsored Activity;

(c) A listing of SBA's and each Cosponsor's rights, duties and responsibilities with regard to the Cosponsored Activity;

(d) A proposed budget demonstrating:

(1) The type and source of financial contribution(s) (including but not limited to cash, in-kind, Gifts, and Participant Fees) that the SBA and each Cosponsor will make to the Cosponsored Activity; and

(2) A reasonable estimation of all anticipated expenses;

(e) A written statement that each Cosponsor agrees that they will not make a profit on the Cosponsored Activity; and

(f) A written statement that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity as outlined in the budget and will be liquidated prior to other sources of funding for the Cosponsored Activity.

**§ 106.204 Who has the authority to approve and sign a Cosponsorship Agreement?**

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve each Cosponsored Activity and sign each Cosponsorship Agreement. This authority cannot be re-delegated.

**Subpart C—Fee Based SBA-Sponsored Activity**

**§ 106.300 Fee Based SBA-Sponsored Activity.**

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Fee-Based SBA-Sponsored Activities pursuant to section 4(h) of the Small Business Act.

**§ 106.301 What are the minimum requirements applicable to Fee Based SBA-Sponsored Activities?**

While SBA may subject a Fee Based SBA-Sponsored Activity to additional requirements through internal policy and procedure, the following requirements apply to all Fee Based SBA-Sponsored Activities:

(a) A Fee Based Record must be prepared by the Responsible Program Official in advance of the activity;

(b) Any Participant Fees charged will not exceed the minimal amount needed

to cover the anticipated direct costs of the activity;

(c) Gifts of cash accepted and the collection of Participant Fees for Fee Based SBA-Sponsored Activities are subject to the applicable requirements in this part, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and

(d) Written approval must be obtained as outlined in § 106.303 of this subpart.

**§ 106.302 What provisions must be set forth in a Fee Based Record?**

A Fee Based Record must contain the following:

(a) A narrative description of the Fee Based SBA-Sponsored Activity;

(b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Fee Based SBA-Sponsored Activities;

(c) A proposed budget demonstrating:

(1) All sources of funding, including annual appropriations, Participant Fees and Gifts, to be used in support of the Fee Based SBA-Sponsored Activity;

(2) A reasonable estimation of all anticipated expenses, which indicates that no profit is anticipated from the Fee Based SBA-Sponsored Activity; and

(3) A provision stating that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Fee Based SBA-Sponsored Activity as outlined in the budget;

(d) With regard to any donations made in support of the Fee Based SBA-Sponsored Activity, the Fee Based Record will reflect the following:

(1) SBA will not unnecessarily promote a Donor, or the Donor's products or services;

(2) Each Donor may receive appropriate recognition for its Gift; and

(3) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor or the Donor's products or services.

**§ 106.303 Who has the authority to approve and sign a Fee Based Record?**

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve and sign each Fee Based Record. This authority may not be re-delegated.

### Subpart D—Non-Fee Based SBA-Sponsored Activity

#### § 106.400 Non-Fee Based SBA-Sponsored Activity.

The Administrator (or designee) may provide assistance directly to small business concerns through Non-Fee Based SBA-Sponsored Activities under section 8(b)(1)(A) of the Small Business Act.

#### § 106.401 What are the minimum requirements applicable to a Non-Fee Based SBA-Sponsored Activities?

While SBA may subject Non-Fee Based SBA-Sponsored Activities to additional requirements through internal policy and procedure, the following requirements apply to all Non-Fee Based SBA-Sponsored Activity:

- (a) A Non-Fee Based Record must be prepared and approved by the Responsible Program Official in advance of the activity;
- (b) Gifts of cash accepted for Non-Fee Based SBA-Sponsored Activities are subject to § 106.500, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and
- (c) Written approval must be obtained as outlined in § 106.403.

#### § 106.402 What provisions must be set forth in a Non-Fee Based Record?

A Non-Fee Based Record must contain the following:

- (a) A narrative description of the Non-Fee Based SBA-Sponsored Activity;
- (b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Non-Fee Based SBA-Sponsored Activities;
- (c) If applicable, a list of Donors supporting the activity; and
- (d) With regard to any donations made in support of a Non-Fee Based SBA-Sponsored Activity, the Non-Fee Based Record will reflect the following:
  - (1) SBA will not unnecessarily promote a Donor, or the Donor's products or services;
  - (2) Each Donor may receive appropriate recognition for its Gift; and
  - (3) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor, or the Donor's products or services.

#### § 106.403 Who has the authority to approve and sign a Non-Fee Based Record?

The appropriate Responsible Program Official, after consultation with the

designated legal counsel, has authority to approve and sign each Non-Fee Based Record.

### Subpart E—Gifts

#### § 106.500 What is SBA's Gift authority?

This section covers SBA's Gift acceptance authority under sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2) of the Small Business Act.

#### § 106.501 What minimum requirements are applicable to SBA's solicitation and/or acceptance of Gifts?

While SBA may subject the solicitation and/or acceptance of Gifts to additional requirements through internal policy and procedure, the following requirements must apply to all Gift solicitations and/or acceptances under the authority of the Small Business Act sections cited in § 106.500:

- (a) SBA is required to use the Gift (whether cash or in-kind) in a manner consistent with the original purpose of the Gift;
- (b) There must be written documentation of each Gift solicitation and/or acceptance signed by an authorized SBA official;
- (c) Any Gift solicited and/or accepted must undergo a determination, prior to solicitation of the Gift or prior to acceptance of the Gift if unsolicited, of whether a conflict of interest exists between the Donor and SBA; and
- (d) All cash Gifts donated to SBA under the authority cited in § 106.500 must be deposited in an SBA trust account at the U.S. Department of the Treasury.

#### § 106.502 Who has authority to perform a Gift conflict of interest determination?

- (a) For Gifts solicited and/or accepted under sections 4(g), 8(b)(1)(G), and 7(k)(2) of the Small Business Act, the General Counsel, or designee, must make the final conflict of interest determination. No Gift shall be solicited and/or accepted under these sections of the Small Business Act if such solicitation and/or acceptance would, in the determination of the General Counsel (or designee), create a conflict of interest.
- (b) For Gifts of services and facilities solicited and/or accepted under section 5(b)(9), the conflict of interest determination may be made by designated disaster legal counsel.

#### § 106.503 Are there types of Gifts which SBA may not solicit and/or accept?

Yes. SBA shall not solicit and/or accept Gifts of or for (or use cash Gifts to purchase or engage in) the following:

- (a) Alcohol products;
- (b) Tobacco products;

(c) Pornographic or sexually explicit objects or services;

(d) Gambling (including raffles and lotteries);

(e) Parties primarily for the benefit of Government employees; and

(f) Any other product or service prohibited by law or policy.

Dated: June 29, 2005.

**Hector V. Barreto,**  
Administrator.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 36, 37, 38, 39 and 40

#### Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** On August 10, 2001, the Commodity Futures Trading Commission ("Commission") published final rules implementing the provisions of the Commodity Futures Modernization Act of 2000 ("CFMA") relating to trading facilities.<sup>1</sup> The amendments proposed herein are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the intervening four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The proposed amendments also would make various technical corrections and conforming amendments to the rules.

In addition, the proposed amendments would revise the application and review process for registration as a derivatives clearing organization ("DCO") by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Commodity Exchange Act ("CEA" or "Act"). In lieu of the current 60-day automatic fast-track review, the Commission is proposing to permit applicants to request expedited review

<sup>1</sup> 66 FR 42256, August 10, 2001.