



SBA Information Notice

TO: All SBA Surety Partners and Small Businesses

CONTROL NO.: 5000-857374

SUBJECT: SBA Form 994 Updated for Criminal Justice Reviews Final Rule

EFFECTIVE: July 09, 2024

The purpose of this Notice is to announce an update to SBA Form 994, “Application for Surety Bond Guarantee Assistance.”

On September 15, 2023, SBA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register ([88 FR 63534](#)) with a 60-day comment period. The NPRM announced SBA’s intention to amend SBA’s regulations on the criminal background review of applicants.

On April 30, 2024 Federal Register Notice ([89 FR 34094](#)) Criminal Justice Reviews for the SBA Business Loan Programs, Disaster Loan Programs, and Surety Bond Guarantee Program (Rule) was published, amending regulations governing SBA’s Surety Bond Guarantee (SBG) Program for criminal background reviews effective May 30, 2024. For the SBG Program, the relevant regulation amended is 13 CFR [115.13\(a\)\(2\)\(i\)](#).

Before the rule change, the language at 115.13(a)(2)(i) stated that a business is ineligible for a bond guaranteed by SBA if the business has a Principal is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships.

On the effective date of the Rule, 115.13(a)(2)(i) is amended to state:

A business is ineligible for a bond guaranteed by SBA if the business has a Principal who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or is under indictment for a felony.

The phrase “serving a sentence of imprisonment imposed upon adjudication of guilty” means a person is serving a sentence for a crime for which they have been found guilty. It does not include a person who is detained but not yet convicted, such as people in jail pending trial.

This Rule only changes SBA’s minimum background check requirements. The Rule revision does

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EXPIRES: 7/1/25

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

not impact a Surety's ability to conduct a criminal history background check, following their own policies, provided they do so in a manner that complies with other relevant laws and does not result in an unjustified discriminatory effect on a protected class group. Sureties can still deny bonds where criminal history, when considered along with other information, presents an unacceptable credit risk.

As a result of the Rule, Part V question 2 on SBA Form 994, regarding the prior criminal history of each Proprietor, General Partner, Guarantor, Limited Partner, Stockholder, or other equity holder owning 20% or more of the small business has been revised to state:

“Are you currently incarcerated, serving a sentence of imprisonment imposed upon an adjudication of guilty, or under indictment for a felony? If an individual's answer is “Yes”, the applicant is not eligible for SBA assistance.”

Any business that checks “yes” to question 2 is ineligible. Because this is a regulatory requirement, there is no opportunity for a request for a waiver or exception to policy.

Sureties may download the revised SBA Form 994 from [SBA's Documents website](#). The revised form may be used immediately; however, SBA has allowed a 30-day grace period from the effective date of the Final Rule for Sureties to begin using the revised form.

Questions concerning this Notice may be directed to Kevin Valdes, Management Analyst, at kevin.valdes@sba.gov.

Jermaine Perry
Director, Office of Surety Guarantees.