

OFFICE OF DISASTER ASSISTANCE

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CHAPTER 1

INTRODUCTION1. AUTHORITY

- a. Section 7(b)(1) of the Small Business Act, as amended, authorizes the Agency's Physical Disaster Loan Program. SBA can make loans to eligible victims of declared disasters as defined by the Small Business Act.
- b. Section 7(b)(2) of the Small Business Act, as amended, authorizes the Agency's Economic Injury Disaster Loan (EIDL) Program. SBA can make loans to eligible nonfarm small businesses and eligible small agricultural cooperatives located in a disaster area that suffered substantial economic injury as a result of the disaster.

2. RELATED RULES, REGULATIONS, AND SOPS

You can find additional program guidance in Title 13 of the Code of Federal Regulations (13 CFR), Part 123, and other Agency SOPs. These are available in the Disaster Assistance Offices and online at www.sba.gov or www.gpoaccess.gov.

3. RESPONSIBILITIES

- a. Associate Administrator for Disaster Assistance (AA/DA).

The AA/DA plans, directs, and administers the Agency's disaster lending programs. The AA/DA's office and staff, located in Washington, DC, comprise the Office of Disaster Assistance (ODA).

- b. The Disaster Assistance Offices.

There are six Disaster Assistance Offices located nationwide, five of which are permanent SBA "Disaster Assistance Centers." Each office is supervised by a Director and operates the disaster program under the direction of ODA.

- (1) The Disaster Assistance Customer Service Center (CSC) located in Buffalo, NY handles tele-registration referrals from the Federal Emergency Management Agency (FEMA) and provides customer support via telephone and email to disaster victims regarding their disaster loan applications.

- (2) The Disaster Assistance Processing and Disbursement Center (PDC) located in Fort Worth, TX serves all U.S. states, territories, possessions, and commonwealths. The PDC mails out application materials to disaster victims. All loan applications for SBA Disaster Loan Programs should be sent to this office for processing. Application processing functions, from application entry, scanning, and processing through to a decision occur in the PDC. All loan approvals, loan document generation, loan closing, and disbursement of loan proceeds are functions of the PDC. The PDC deploys field loan closers as needed to support loan closing operations.

- (3) The Disaster Assistance Field Operations Center East (FOC-E) located in Atlanta, GA and the Disaster Assistance Field Operations Center West (FOC-W) located in Sacramento, CA manage and coordinate ODA's field response and all field resources necessary to implement SBA's Disaster Loan Program within their respective jurisdictions. Each FOC is responsible for conducting original verifications of disaster damages outside the continental United States (OCONUS). They are also responsible for conducting all Preliminary Damage Assessments (PDAs), on-site reverifications, and on-site progress inspections in their respective geographical areas of responsibility both inside/outside the continental United States (CONUS). They respond to congressional inquiries and perform public information functions. They are also responsible for working with Small Business Development Centers (SBDCs) in their respective territories.
- (4) The Personnel and Administrative Services Center (PASC) located in Herndon, VA is the primary nationwide resource management support center. PASC is comprised of three distinct functional areas: Personnel, Administration, and Administrative Law.
- Personnel Operations oversees the full service personnel resource management program including recruitment, staffing, benefits, pay and leave, employee relations, performance, classification, etc. Administrative Operations is responsible for the full service administrative resource management program including support services, supply control activities, budget, procurement, travel, payroll, facilities management, and warehouse and storage facilities. Administrative Law Operations provides Agency representation, guidance, and advisory services on administrative litigation issues such as accident report and tort claims, labor relations, Equal Employment Opportunity (EEO), Merit Systems Protection Board (MSPB), and Freedom of Information Act (FOIA).
- (5) The Disaster Credit Management System (DCMS) Operations Center also located in Herndon, VA is responsible for maintaining and updating the DCMS software, interfacing with other computer systems [Data Communication System (DCS), FEMA's National Emergency Management Information System (NEMIS), credit bureau reports (CBRs)], and the computer hardware necessary to operate the system. It updates the system business rules, edits, and security as required by policy and procedure changes. It operates a Help Desk for end users in all locations.
- (6) The Field Inspection Team (FIT) is responsible for conducting original verifications of disaster losses in the CONUS. The FIT is headquartered at the Herndon, VA location but also has staff which operates out of both Field Operations Centers.

4. CHANGES TO THIS SOP

Disaster loan policies and guidelines cannot anticipate all of the needs that may arise in any given disaster. Therefore, these procedures and guidelines may change without advance notice. ODA notifies **the Disaster Assistance Offices** of all changes.

5. EXCEPTIONS TO POLICY AND SOP REQUIREMENTS

A policy exception is any recommended action not in full compliance with this SOP. Only the AA/DA can approve exceptions.

6. TYPES OF DISASTER DECLARATIONS AND OTHER ASSISTANCE

There are four types of disaster declarations:

- a. Presidential. This activates SBA's physical and EIDL programs. Some other forms of Federal and State assistance available in addition to SBA loans are:
 - (1) **Rental Assistance and Home Repair Program (HA)** – administered by **FEMA, which is the coordinating agency for all assistance.**
 - (2) The Assistance to Individuals and Households Program (IHP) – FEMA and the States have flexibility on the delivery of this type of grant assistance. **There is an overall cap on grant assistance for any one disaster (adjusted annually in October),** excluding grant monies for permanent housing construction.
 - (3) FEMA Public Assistance (PA) – grant program for noncritical Private Nonprofits (PNPs) that provide essential services of a governmental nature **(see subparagraph 20.b.(1)).**
 - (4) Services provided by the American Red Cross (ARC) and other volunteer agencies.
- b. Administrative. This activates SBA's physical and EIDL programs. Generally, the only other assistance in addition to SBA is from volunteer agencies.
- c. Secretary of Agriculture (SecAg). This activates SBA's EIDL program.
- d. **Governor's Certification (7(b)(2)(D)).** This activates SBA's EIDL program.

7. ATTITUDE OF SBA DISASTER PERSONNEL

The disaster assistance program is customer driven. The people coming to you for assistance have been through a traumatic experience from which they may not have recovered. You are there to help, not to further discourage them. It is absolutely essential that you exercise tact, compassion, and professionalism at all times.

8. AUTHORITY TO APPROVE, DECLINE, OR WITHDRAW LOAN APPLICATIONS

SBA offers six types of disaster loans: Home, Business/EIDL (B/E), Nonprofit (physical only), Stand Alone EIDL, Military Reservist EIDL (MREIDL), and Pre-Disaster Mitigation Loan Program (PDMLP). Recommendations to approve, decline, or withdraw an application initially rests with the processing loan officer based on delegated responsibility (see appendix 8).

a. Rule of Two. Loan recommendations generally require concurrence. If the official who has the authority to take action does not agree with the recommendation, the next higher level of authority must resolve the issue with the following exceptions:

(1) DCMS includes business rules for initial Auto-Denial and Pre-Loss Verification (Pre-LV) review. A supervisory loan officer (SLO) reviewing Pre-LV declines can override the automated decision and route the case file for regular processing without obtaining the next higher level of authority (see appendix 8).

(2) DCMS also includes business rules for approving loan modifications. An SLO, Attorney, Loan Officer (1, 2, or 3 as delegated), Paralegal Specialist (2), or a Customer Service Representative (CSR) can approve certain types of loan modification actions without obtaining the next higher level of authority. These actions are limited to:

(a) Approving an extension of the disbursement period for a period of time not to exceed six (6) months beyond the original disbursement deadline. The requirements of subparagraph 94.c. do not apply to these actions.

(b) Approving an extension of the deadline to return the loan closing documents. The extension may not exceed 60 days from the date of the SBA contact with the borrower, and may not exceed 12 months from the date of the LAA.

(c) Changing and/or updating telephone numbers.

(d) Providing pay-off information.

(e) Canceling undisbursed loans in their entirety, after a written or oral request from the borrower, except where the borrower has experienced an adverse change.

b. General Limits on Loan Approval Authority.

(1) Authority to Approve Loans (for any applicant and its affiliates for a single disaster).

(a) SLOs may approve all disaster loans up to and including \$750,000, and subsequent loan modifications that cause the total loan amount to increase up to and including \$750,000, based on their level of delegated authority as indicated below.

(i) SLO 1 can approve all Home loan actions.

(ii) SLO 2 can approve all Home, B/E (Phase 1 only) and PDMLP loan actions.

(iii) SLO 3 can approve all Home, B/E (all phases), Nonprofit, Stand Alone EIDL, MREIDL, and PDMLP loan actions. This level of designation applies only to:

1. A cadre employee after receiving specific authority from the CD/PDC or designee; or
2. A temporary employee after receiving specific authority from the AA/DA.

- (b) The CD/PDC, the Assistant Director for Loan Processing (ADLP) or any SBA employee officially designated as acting in either position has the authority to approve all disaster loans up to and including \$1,000,000 and subsequent loan modifications that cause the total loan amount to increase up to and including \$1 million.
- (c) Only the AA/DA, or designee, has the authority to approve loans in excess of \$1,000,000 and subsequent loan modifications that cause the total loan amount to exceed \$1 million. ODA will review the recommendation of the ADLP through the CD/PDC as stated in the justification tab in the case file.
- (d) When eligible, loan applications for businesses in which a Member of the United States Congress holds an ownership interest must be submitted to the AA/DA or designee for approval (see subparagraph 15.j. for eligibility requirements).

(2) Loans to SBA Employees, Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and Advisory Council Members. Applications from these individuals, or members of their household (as defined in 13 CFR §105.201(d) of the Standards of Conduct regulations), may be accepted and processed without a review by the Standards of Conduct Committee as follows.

(a) Home Loans.

- (i) When there is no apparent conflict of interest, the CD/PDC or Deputy Center Director (DCD/PDC) may approve or decline these applications, but before taking final action, should notify the appropriate District Director (DD) or Regional Administrator (RA) of the proposed action.
- (ii) Where the CD/PDC or DCD/PDC believes the appearance of a conflict of interest may exist, and in all cases where the applicant is a disaster employee or a member of the employee's household, the case file must be forwarded to ODA for final action. Only the AA/DA or designee can approve or decline these applications. The justification tab must outline the conflict (or relationship to the SBA employee) and contain the CD/PDC's or DCD/PDC's recommendation for final credit action.

- (b) Business Loans. Only the AA/DA or designee can approve or decline these applications. After processing, ODA must review the recommendation of the CD/PDC or DCD/PDC as stated in the justification tab of the case file.
- (3) Restoration or Replacement Cost of Real Property Exceeding Predisaster Value. The ADLP or designee must approve loans if the allocation to repair or replace disaster damaged real property exceeds the loss verifier's estimate of the predisaster fair market value. This does not apply when the loss is to manufactured housing (MH).
- (4) Check endorsement authority rests with the CD/PDC, ADLP, Center Counsel or their designees.
- c. Proposed modifications to loans approved by ODA must have ODA concurrence.
- d. The delegating official will notify disaster employees in writing of his/her loan approval and decline authority.
- e. Approval and disbursement of disaster loans are subject to availability of funds.

9. CONFIDENTIAL INFORMATION

- a. Agency Actions.
 - (1) Disaster employees must not reveal to the applicant or the applicant's representative, the name, title, or recommendation of any SBA employee or official pertaining to any Agency decision.
 - (2) We will only disclose the Agency's decision. However, upon applicant's specific oral or written request, we can reveal the name and title of the person who signed the final action.
- b. SBA Employees to Deal Only With Authorized Representatives.

SBA applications require a listing of anyone retained by an applicant as their SBA representative, and the compensation to be paid. You may only discuss a case with an applicant or someone named in the application or in a letter of authorization as a representative.

10. REFERRAL TO THE OFFICE OF INSPECTOR GENERAL (OIG)

- a. When you have questions about the truthfulness or accuracy of an application or supporting data and information (including tax information), you should refer the case to the OIG. After a case is referred to OIG, and before final Agency action, the field office will not make any statement about actions taken by the OIG, except as permitted by law.

- b. You should immediately report any known or suspected improper activity directly to OIG. This includes program irregularities, misrepresentation, and bribery overtures, attempts, or solicitations. Call the OIG Hotline at (800) 767-0385 or send a written referral to: OIG, 409 3rd Street SW, Mail Code 4113, Washington, DC 20416. Copies may be sent to supervisory officials in the respective disaster assistance office.

11. CONGRESSIONAL INQUIRIES

- a. Congressional inquiries generally go to the FOC-E and FOC-W and are answered directly, where appropriate. Each center must send a copy of all congressional inquiries and responses, or a record of telephonic congressional inquiries to the Office of Congressional and Legislative Affairs (CLA) in SBA Headquarters, ODA, and appropriate district offices.
- b. Loan officers, who receive an inquiry from a congressional office, should chron the conversation and immediately transfer the call to the PDC's Public Information Office (PIO). The PIO will record any contact with a congressional office using the Inquiry/IG screen.
- c. SBA cannot release personal financial (or other) information about a loan applicant or borrower to a third party without a Privacy Act release. This policy also applies to congressional inquiries. When we have a congressional inquiry, we can give only general information on the status of a loan to the congressional office, e.g., whether there is an inspection scheduled, whether the application is assigned to a loan officer, that the application is approved, declined, or withdrawn, etc. Without a release we cannot tell the office that their constituent is a felon, delinquent on a Federal debt, lacks repayment ability, has unsatisfactory credit, etc.
- d. The need for a Privacy Act release arises when the congressional office begins to ask questions about specific information on why a person is ineligible, the reasons for decline, etc. At the onset of a congressional inquiry, it is important that we explain our policy and the need for a Privacy Act release so the congressional office can decide whether they need a release.

12. CASE FILE DOCUMENTATION

- a. Case File Maintenance. All documents must be scanned so they can be stored electronically in the case file.
- b. Copies of Original Documents.
 - (1) When you receive original documents, either at application entry or during processing (deeds, abstracts of title, etc.), make a copy, mark it "copy," and date-stamp the receipt date on the copy. You must have the copy scanned into the case file and return the original(s) to the applicant.
 - (2) You must not write or mark on original documents received from applicants/borrowers; original documents must be copied and date-stamped, as described in subparagraph b. above.

c. Communication Documentation.

- (1) You must not issue any official correspondence without a date, printed (or typed) name, and organizational title (not the personnel classification). For example, employees classified as loan specialists or construction analysts should sign documents as loan officer or loss verifier, respectively.
- (2) You must record in the Comments Tab (chron log) or Justification Tab, your name; department; the contents of all conversations with the applicant, the representative, or anyone else (banker, insurance agent, etc.). Your summary of the call should:
 - (a) include the name and comments of each participant
 - (b) identify persons who are not the applicant (e.g., representative, banker, insurance agent, accountant, etc.)
 - (c) state only the facts
 - (d) not state your personal opinion or comments out of context
 - (e) reference all unsuccessful attempts to make contact
 - (f) specify the exact terms and conditions of the loan, including collateral and insurance requirements as well as an explanation of any/all custom stipulations
 - (g) advise the applicant/borrower that the recommendation is only a proposal and must be approved by a supervisory loan officer
 - (h) explain that they will be notified in writing of the exact terms and conditions of the loan or loan modification, when applicable
 - (i) include the reasons for decline/withdrawal with an explanation of reconsideration/reacceptance rights and any requisite documentation.

CHAPTER 2

ELIGIBILITY OF APPLICANTS FOR PHYSICAL DISASTER LOANS13. APPLICANTS GENERALLY ELIGIBLE

Applicant eligibility is subject to the limitations and restrictions in paragraphs 14 and 15.

- a. Applicants Legally Able to Contract Debt. The age at which an individual may legally contract to establish a debt varies among states. You must consult with Center Counsel if the applicant is under 21 years of age.
- b. Businesses of Any Size. There are no size restrictions for physical business disaster loans.
- c. Organizing Businesses. A business that was in the process of starting operations and had purchased fixed assets, inventory, etc., that was subsequently damaged or destroyed by the disaster is eligible. This is true even if that business had not actually "opened its doors" before the disaster occurred. We require documentation to support this "organizing stage," such as:
 - (1) Receipts or contractual agreements for inventory or machinery and equipment purchases; and
 - (2) Advertisements, employment classified ads, etc.
- d. Nonprofit Organizations. Nonprofit organizations, including private nonprofit organizations that provide essential services of a governmental nature, charitable and religious organizations and condominium or other associations, are eligible (see paragraphs 24 and 25).
- e. Owners of Rental Property. Owners of commercial or residential rental property are eligible for business loans.
- f. Legal and Illegal Aliens. Legal aliens are eligible for disaster loans. Illegal aliens (individuals not lawfully in the United States) are not eligible.
 - (1) Home Loan Applicants. We ask home loan applicants if they are a U.S. citizen on the application. Loan approval for documented aliens is a matter of credit just as it is for all other applicants.
 - (2) Sole Proprietors. We ask sole proprietors if they are a U.S. citizen on the application. Loan approval for documented aliens is a matter of credit just as it is for all other applicants.

NOTE: Applicants who have accumulated property; established themselves in the community; established credit and banking relationships; and paid local, State, and Federal taxes are likely to be relatively stable. The greater the amount of property owned, particularly real property, the greater the probable stability and reasonableness of assurance of repayment.

- (3) Corporations. Alien-owned corporations properly registered and licensed in the state where the disaster occurred are eligible.
- (4) Partnerships. Alien-owned partnerships properly registered and licensed in the state where the disaster occurred are eligible. If any general partners or limited partners owning 20 percent or more of the applicant are in the USA, they must be lawfully within the country.
- (5) Limited Liability Entities (LLE). Alien-owned LLEs properly registered and licensed in the state where the disaster occurred are eligible. If any member owning 20 percent or more of the applicant is in the USA, they must be lawfully within the country.

g. Owners of Equity in Property.

When an applicant is purchasing the damaged or destroyed property under a contract of sale or similar agreement, both the buyer and the seller may have eligibility for a portion of the disaster damage, as follows:

- (1) When either party to the contract waives their claim for SBA disaster loan assistance, the other party is eligible to apply for a disaster loan in the amount of full eligibility;
- (2) If a waiver cannot be arranged, each party is eligible for their pro-rata share of disaster loan eligibility in proportion to their equity in the property;
- (3) If loan eligibility is split (i.e., both buyer and seller apply for loans in the amounts of their respective equities), the real estate portion of both loans must be used to restore the property;
- (4) You must secure both loans when the combined total is more than \$10,000;
- (5) You must secure any loan to the record titleholder (the seller) requiring collateral by a mortgage on the damaged property; and
- (6) You must secure any loan to the equity owner (the purchaser) requiring collateral by, in order of preference and subject to state law, a mortgage executed by the seller, or purchaser's assignment of the purchase contract and purchaser's interest therein.

h. Purchasers of Damaged Property Subject to a "Contract to Sell."

- (1) Generally, purchasers of disaster damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster without reducing the purchase price to allow for the disaster damage, have eligibility, rather than the seller. You must deduct from eligibility the proceeds of any insurance or other compensation for damages received by either party.

- (2) Purchasers of disaster damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster with a reduction to the selling price, may have eligibility. The purchaser is eligible to the extent that the damage is not otherwise compensated. You must consider any reduction in the purchase price as compensation, and reduce eligibility accordingly.

NOTE: Purchasers of disaster damaged property which was not under a contract to sell prior to the disaster may be eligible, to the extent that the change of ownership involves other family members, close relatives, partners, officers, or long-time employees. If you justify this change in ownership in the case file, these applicants retain eligibility (less any compensation/recovery by either the buyer or the seller) even if the disaster damage results in a reduction in the purchase price.

i. Applicants who "Walk Away" from their Mortgage(s) are Eligible.

- (1) In some states, a mortgage foreclosure sale cannot result in a deficiency judgment against the purchaser under a purchase money mortgage. When applicants walk away from their financial obligation(s), the amount of the disaster loan must not exceed their equity (where state laws permit mortgagors to walk away from their obligations). Equity is defined as SBA's estimated predisaster fair market value (FMV) of the damaged or destroyed real estate less all recorded liens the applicant can and does walk away from.
- (2) Those disaster victims who can and do walk away from their obligations, regardless of their reasons for walking away, may borrow only the lesser of their net disaster loan eligibility or equity. This also includes situations where the damaged property is deeded back to a mortgage holder, who confirms in writing that there is no further liability on the part of the purchaser.
- (3) Applicants who walk away from their obligations in states, which do not permit them to do so, retain full eligibility. However, there may be serious credit concerns due to the contingent liability of the debt walked away from. This also includes situations where a private party is the mortgage holder and they refuse to accept the deed or remove further liability from the purchaser.

NOTE: When applicants are permitted to walk away, you must limit eligibility in accordance with the above policy regardless of any other real property eligibility considerations.

For example, an applicant's real property has a FMV of \$200,000 and a first mortgage principal balance of \$175,000. The property is condemned by local authorities and is a total loss under our guidelines. The applicant decides to walk away and the seller agrees to accept the deed with no further liability. In this case, the applicant did not suffer a \$200,000 loss, but rather an equity loss of \$25,000, which represents their maximum eligibility.

j. Beneficial Owners.

- (1) Individual local chapters of eleemosynary (i.e., charitable, nonprofit) organizations having full use of and benefits from, property owned by the parent organization are each eligible for separate SBA physical disaster loans. For example, the American National Red Cross is vested with legal title to the real properties used by the various Red Cross chapters; however, each chapter raises its own funds, controls the use of the property, and is the "beneficial owner" of the property. We do not combine applications from several Red Cross chapters (or other similar organizations) as though they were affiliated.
- (2) A mortgagee (mortgage holder) who began legal action against the defaulting property owner prior to the disaster is eligible if all other relevant criteria are met.

k. Non-owner applicants who must repair or replace the damaged or destroyed property are eligible. The two most common non-owner applicants are:

- (1) Bailee-for-Hire. This occurs when property owned by one party is physically in the possession of another party at the time of the disaster. You should discuss bailment eligibility matters with counsel.
 - (a) Bailees include but are not limited to: warehousemen, garage keepers, parking lot operators, laundries, dry cleaners, automobile and other repair shops, and pawnbrokers.

NOTE: This situation does not apply to property obtained by the pawnbroker following the customer's failure to redeem.

- (b) If the bailee is legally liable and will actually compensate the bailor for an uninsured loss of bailed property, the bailee is the one who suffered the loss and has the eligibility to file an application. If not, the bailor is eligible.
- (c) In establishing bailee eligibility, the case file must include evidence that:
 - (i) The loss is not covered by insurance from either party;
 - (ii) The owner is requiring the bailee to pay for the loss; and
 - (iii) The owner will not file for SBA disaster loan assistance relating to that particular loss.
- (2) Tenants. A lease may require a non-owner tenant to repair/replace disaster damages to the owner's real property in addition to the tenant's leasehold improvements. If so, the case file must contain:

- (a) A complete, legible copy of the lease in effect at the time of the disaster. If there was no written lease in effect at the time of the disaster, you must obtain a written statement from the lessor indicating the type of arrangement that was in effect at the time of the disaster, and who has responsibility for repairing damage to the real estate, other than leasehold improvements. You should inform the applicant and the lessor that a formal written lease will be required if a loan is approved to repair the real estate damage;
- (b) Documentation that you have reviewed the lease agreement (or written statement of the arrangement in place at the time of the disaster) with counsel to determine if the appropriate "repair responsibility" clause is specific enough to warrant eligibility (a standard clause merely requiring the property to be maintained in good order does not warrant eligibility); and
- (c) Written verification from the applicant and the owner that the loss is not covered by insurance.

l. Owners of Leasehold Improvements (LHI).

- (1) The lessee (tenant) who owns damaged/destroyed LHI is eligible for the improvements. If the existing lease (including renewal options) does not run as long as the repayment term of the disaster loan, generally SBA will require that the lease be extended to run for the term of the SBA loan and assigned to SBA with right of reassignment.
- (2) In cases where it is not possible or desirable to modify the term of the lease, you must fully document:
 - (a) The likelihood of the applicant continuing in business at the same or different location;
 - (b) The uniqueness of the LHI and their adaptability or need, at a different location; and
 - (c) How such a situation would affect repayment ability.
- (3) Tenant eligibility for real estate or leasehold repairs which are or will be owned by the landlord is site-specific and not transportable to a new location. The Loan Authorization and Agreement (LAA) must reflect this when eligibility is based upon a lease requirement. Conversely, lessees who own LHI are eligible for their repair or replacement, and this eligibility remains if the tenant relocates.

- m. Nurseries. SBA regulations define nurseries as commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod. Nurseries are not eligible for physical disaster loans.

For purposes of physical disaster loan eligibility, a business deriving less than 50 percent of annual receipts from the production of nursery products is not an agricultural enterprise and is eligible (see subparagraph 15.g.).

n. Owners of Property That is the Primary Residence of Another May Be Eligible.

(1) As business applicants, if:

- (a) The property is held for rental income instead of for the owner's recreation; and
- (b) Qualifies under §280A of the Internal Revenue Code (26 U.S.C.) for deduction of ALL operating expenses.

NOTE: For disaster loan purposes, a qualified rental property is property used predominately for income production instead of the owner's recreation. Generally, properties used by the owner for more than 14 days during the tax year would not qualify as true rentals.

(2) As home applicants, if:

- (a) The individual(s) occupying the home are close family members, life long family friends, long time business associates or employees, or maintain more than a casual relationship with the owner(s); and
- (b) You confirm there has been, and remains, the intent to provide long-term, permanent housing to those individuals. (A short-term occupant in a rent free vacation home would not qualify as the owner for this exception.)

For example, a son owns and maintains a home for his elderly mother. The mother pays no rent to the son. By definition, the home is the mother's primary residence, but for disaster loan purposes, the son is the eligible applicant since eligibility is tied to ownership, not occupancy. We do not require the occupant to be a joint applicant on a loan to repair the owner's building to establish eligibility. You only include the occupant when necessary for credit considerations. The occupant has separate eligibility for personal property (PP) losses.

(c) It is possible for one applicant to apply for and obtain more than one home loan for damages resulting from the same disaster. For example, the applicant has damage to their primary residence and damage to the residence occupied by another. If this occurs:

- (i) You must combine the loan amounts for purposes of determining the secured threshold; and
- (ii) The combined dollar amount of the loans cannot exceed the administrative limit applicable to a single home loan.

o. Native Americans. Disaster declarations can include all or a portion of an Indian Reservation. Individual Native Americans who own property located on a reservation are subject to certain eligibility requirements and restrictions.

(1) Home Loan Applicants.

- (a) Personal Property Losses. Native Americans who live on a reservation are eligible to apply for personal property losses. They are subject to the same eligibility requirements as any other disaster victim.
- (b) Real Property Losses. Generally, eligibility for real property losses to a primary residence located on a reservation is limited to those structures or improvements associated with the primary home. There is no eligibility for the land or improvements owned by the tribe, since we consider the tribe to be a "governmental entity." You may also apply the concept of beneficial ownership to establish eligibility (see subparagraph 13.j.).

(2) Business Loan Applicants.

- (a) Individually owned businesses located on a reservation are eligible to apply for losses to business property, except for land or improvements owned by the tribe, and are subject to other program requirements.
- (b) Tribal owned businesses are discussed in **subparagraph 13.p.**
- (c) Consult Center Counsel or designee in all cases where eligibility is unclear.

p. Tribal Owned Businesses. SBA considers Indian tribes "governmental entities." They are ineligible for disaster assistance. However, in certain circumstances a tribal corporation may be separate from the tribe. Under the following provisions, and with required documentation, Center Counsel or designee should consider eligibility of a tribal owned business.

The loan package must include the tribe's governing instrument (i.e., constitution or business charter) and the tribal corporate charter (may be an ordinance or resolution of tribal council). Examine the documents for the following:

- (1) The governing document must expressly set forth powers and authorize delegation to a (business) committee (e.g., to manage the economic activity of the tribe).
- (2) Chartering a tribal corporation must be a direct mode of executing the expressed powers (see subparagraph **(1) above**).
- (3) The charter authorizing a tribal corporation must designate the corporation to be separate and distinct from the tribe.

- (4) The tribal corporate charter must contain a waiver of sovereign immunity. This may be accomplished:
 - (a) With an express waiver of sovereign immunity; or
 - (b) By use of a sue or be sued clause, in which case U.S. (Federal) courts should be specifically designated to be among the "courts of competent jurisdiction."
- (5) The tribal corporation must have its own assets to pledge as security for the loan (because the waiver in subparagraph (4) above does not apply to tribal property or assets). We must examine the assets pledged to assure that they are not tribal property nor among the tribe's assets being held in trust or restricted status.

The tribe may include a written analysis by its attorney in support of the loan application and related documents.

14. RESTRICTIONS ON APPLICANT ELIGIBILITY

- a. Equal Credit Opportunity Act (ECOA) in "Community Property" States. In community property states, SBA may not arbitrarily require the signature of a nonapplicant owner or spouse to join in a loan application solely due to marital status or ownership (see appendix 23).
- b. Businesses Considered as Hobbies. Some endeavors constitute hobbies of the owner even though they are organized as a business. As hobbies, they are not eligible for physical loss or EIDL assistance. If you have reason to believe that an endeavor is in fact a hobby, determine if IRS has reviewed the business status. In the absence of an IRS review, you should consider whether the business is properly licensed by appropriate authorities, and whether reasonable efforts have been made to operate as a business rather than a hobby.
- c. Applicant's Character.
 - (1) Felony Committed During a Riot or Civil Disorder or Other Declared Disaster. Individuals convicted during the past year of a felony during and in connection with a riot or civil disorder or other declared disaster are not eligible (1106(e) of P.L. 90-448, Department of Housing and Urban Development (HUD) Act of 1968 and 13 CFR §123.101(a)). You must decline their application for policy reasons using code 43.
 - (2) Criminal Arrests/Indictments/Convictions/Parole/Probation. It is not in the public interest for SBA to extend financial assistance to individuals who are not of good character. Applications cannot be approved without appropriate clearance from ODA when the applicant or one of the principals of the business:
 - (a) Have records indicating an arrest, indictment, or conviction for a criminal offense; or
 - (b) Are currently on parole or probation.

See paragraph 74 for detailed procedures.

- d. Production and Distribution of Obscene Material. By statute ((4)(e), Small Business Act), we cannot provide assistance to any business concern or other person engaged in the production or distribution of any product or service determined to be obscene by a court of competent jurisdiction.
- e. Certification of Compliance with Child Support Obligations.
- (1) Home Loan and Sole Proprietor Applicants. By statute, at the time of loan closing, applicants must certify that they are not more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or state agency providing child support enforcement services).
 - (2) Other Business Loan Applicants. The above restriction also applies to certain business principals. If any business principal with a 50 percent or greater ownership interest in the applicant is more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or State agency providing child support enforcement services), you can process the application only if that individual(s) will divest all direct and indirect interest in the business. The CD/PDC may recommend approval. The AA/DA must take final action.
- f. Membership Groups.
- (1) Whenever a fraternal organization, country club, civic, or other membership group requests disaster loan assistance, you must immediately notify the applicant in writing **using SBA Form 2262** that:
 - (a) SBA's regulations apply to their membership policies;
 - (b) Consideration of race, color, religion, sex, handicap, age, or national origin of applicants for membership in the organization would, during the term of the loan, be inconsistent with the non-discrimination requirements of the Civil Rights Act; and
 - (c) SBA will consider as overridden any existing restrictions in the national or local charter, by-laws, or regulations of the organization denying membership because of race, color, or national origin.
 - (2) We must be satisfied that enforcement of this nondiscrimination agreement will not result in the local chapter's loss of the national charter or possibly its income from membership fees. The loss of either could destroy the organization's ability to repay.
 - (3) The Department of Justice has issued an opinion that these restrictions apply to ethnic, fraternal, or social organizations that use national origin as a membership criteria, such as Sons of Italy, Friendly Sons of St. Patrick, etc., and they are subject to the provisions of Title VI of the Civil Rights Act of 1964. Therefore, they must agree to admit members without regard to national origin as a condition of receiving a disaster loan.

- (4) Exemptions from the Nondiscrimination Requirements Under the Civil Rights Act. These exemptions pertain only to gender discrimination, and apply to:
- (a) Educational institutions of religious organizations with religious tenets contrary to the nondiscrimination law;
 - (b) Educational institutions training individuals for military service or the merchant marine;
 - (c) Social fraternities or sororities which are tax exempt and whose membership primarily consists of students in attendance at an institution of higher education;
 - (d) Certain voluntary service organizations:
 - (i) YMCA;
 - (ii) YWCA;
 - (iii) Girl Scouts;
 - (iv) Boy Scouts; and/or
 - (v) Campfire Girls.
 - (e) Boys and girls conferences (the American Legion Boys State, Boys Nation, Girls State, and Girls Nation Conferences) and promotional activities of secondary schools or educational institutions for these conferences;
 - (f) Father-son or mother-daughter activities at educational institutions, so long as the activities are provided for students of both sexes; and
 - (g) Institutions of higher education scholarship awards in "beauty pageants" as long as the pageant complies with the other nondiscrimination provisions of Federal law.

15. APPLICANTS GENERALLY INELIGIBLE

- a. Purchasers of Disaster Damaged Property are ineligible, including, but not limited to, the following.
 - (1) Businesses. This includes substantial change in ownership, which is defined as a change in ownership of more than 50 percent of the equity. (This restriction does not apply to those transactions described in subparagraph 13.h.)
 - (2) Homes. (The restriction also does not apply to those transactions described in subparagraph 13.h.)
- b. Publicly Owned Institutions and Public Entities. Cities, counties, etc., are ineligible for SBA disaster loans.

- c. Assumption of Risk and Failure to Comply. Applicants who assumed the risk or possibility of loss or failed to comply with the terms and conditions of their prior SBA loans (including loans subsequently sold to a third party) are ineligible.
- (1) Assumption of risk is evidenced by the omission of a required act, such as failure to maintain insurance [see subparagraph (2) below]. This conforms the eligibility for disaster loans in assessing the risk of loss and mitigating against future floods to the standards of the National Flood Insurance Program (NFIP). Owners of property located between a river and a levee or in a flowage easement are subject to the same restrictions as disaster victims located in any other area of flood risk.
 - (2) Failure to Maintain Required Federal Flood or Other Insurance.
 - (a) Recipients of prior disaster loans who did not maintain required Federal flood or other insurance are not eligible for any SBA disaster loan assistance caused by any type of future disaster.
 - (b) For any disaster loan made in 1982 or later (and still outstanding) covering property then located in a special flood hazard area (SFHA), you must assume that flood insurance was required. If there was no flood insurance in effect for property in the SFHA at the time of the current disaster, the applicant is in violation of the LAA and you must decline the application (code 39).
 - (c) This restriction includes subsequent flood damage which exceeds the amount of flood insurance the applicant was required to maintain by the terms of the LAA.
 - (3) Compliance With Flood Insurance Requirements of Prior SBA 7(a) or 504 Business Loans. Disaster loan applicants who are not in compliance with flood insurance requirements of existing SBA business loans (e.g., 7(a) or 504) are ineligible. There were variations in procedures related to flood insurance requirements in nondisaster SBA loans and you cannot assume that maintenance of flood insurance was a requirement of those loans. When an applicant has an outstanding SBA 7(a) or 504 business loan, the following steps must be taken.
 - (a) You must check with the appropriate SBA district (or other servicing office) to determine what specific flood insurance requirement (if any) was a condition in each loan authorization.
 - (b) In many cases, a general "if the property is in a flood zone" stipulation (commonly known as the if/when clause) was included in loan authorizations. You must determine if the borrower was notified by SBA or a participating lender that the property is in an SFHA and that the requirement to purchase flood insurance applies. Evidence of notification can include:
 - (i) Documentation in the case file that flood insurance was purchased to satisfy a loan stipulation; and

- (ii) Evidence that flood insurance was purchased prior to disbursement of the loan.

NOTE: We will treat an absence of any written documentation as a lack of notice and consider the if/when stipulation is satisfied.

- (c) When the borrower has complied with the stipulation of their LAA, or when the available written record is inconclusive, the borrower is otherwise eligible.
 - (d) When the disaster loan applicant did not comply with the flood insurance stipulation for a prior loan, they are ineligible.
- (4) Failure to Comply With Loan Authorizations. Generally, applicants who did not comply with the terms and conditions of the loan authorization(s) of prior SBA loan(s) (includes unsatisfactory loan repayment experience, failure to purchase and maintain stipulated fire and extended coverage insurance, etc.), are ineligible. You must justify any variance from this general policy.
- d. Applicants who do not intend to repair or replace damaged property are ineligible.
 - e. A Mortgage Holder who both instituted foreclosure action and acquired title after the disaster is ineligible.
 - f. Owners of Unimproved Real Estate held for speculation, investment, or future development are ineligible (see limited exception at subparagraph 26.b.(2)).
 - g. Farmers/Ranchers/Aquaculturists.
 - (1) By statute (PL 99-272) SBA may not provide disaster loans to agricultural enterprises. A business may be primarily an agricultural enterprise but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc.
 - (2) Section 18(b) of the Small Business Act defines agricultural enterprise as those businesses engaged in the production of food and fiber, ranching, and raising of livestock (including feedlot operators), aquaculture, and all other similar farming and agriculture related industries. This definition is not limited to products for human consumption. Most agricultural enterprises fall into Industry Sector 11 of the North American Industry Classification System (NAICS).
 - (3) Aquaculture is defined as husbandry of aquatic organisms under a controlled or selected environment (fish farms). An aquaculture operation is ineligible if it is engaged in husbandry of aquatic organisms on grounds which the applicant owns, leases, or has an exclusive right to use.

Exclusive use-rights are usually documented by a lease or a permit specifically identifying the waters available for the applicant's use. For example, oystermen who seed private grounds which they own or rent, are engaged in aquaculture and are ineligible. Public ground oystermen, however, who do not have exclusive use of any area, do not farm and are eligible.

- h. Concerns Engaged in Illegal Activities.
- i. Concerns Engaged in the Sale of Products or Services or Live Performances of a Prurient Sexual Nature.
- j. Members of Congress.
 - (1) 18 U. S. C. §431 prohibits SBA from making a disaster loan to an unincorporated business or a disaster home loan, when a Member of Congress holds a direct or indirect ownership interest.
 - (2) In the disaster loan program, with limited exceptions, Members are prohibited from entering into a contract (i.e., a mortgage, deed of trust, promissory note or personal guaranty) with SBA. However, the law does not prohibit SBA disaster loans to corporations in which a Member holds an ownership interest that would not require the Member of Congress to sign a contract with SBA. For example, if the Member is required to sign the SBA guarantee, the applicant corporation would not be eligible. See paragraph 49 for guarantee requirements.
 - (3) Some examples of the application of this requirement are:
 - (a) SBA can make a disaster loan to a corporation in which a Member owns stock if the Member does not execute a mortgage, deed of trust, note, or personal guaranty with SBA.
 - (b) SBA cannot make a disaster loan to an LLC in which a Member has a membership interest.
 - (c) SBA cannot make a disaster loan to a partnership in which a Member is a partner.
 - (d) SBA cannot make a disaster loan to a sole proprietorship owned by a Member of Congress.
 - (e) SBA cannot make a disaster loan for damage to a home in which a Member has a direct or indirect ownership interest or if the Member has a fiduciary interest (e.g., power of attorney or trustee) with respect to the home.
 - (4) Please note that the prohibition contained in 18 U. S. C. §431 applies differently in the context of the SBA 7(a) and 504 loan programs.

16. RESERVED.

CHAPTER 3

ELIGIBILITY OF PROPERTY FOR PHYSICAL DISASTER LOANS17. GENERAL ELIGIBILITY RULE

Generally, property damaged or destroyed by a declared disaster is eligible. However, certain statutory, regulatory, and SOP restrictions and limitations apply. Individual disaster assistance offices and employees must not impose limits or restrictions not provided by statute, regulation, or this SOP.

18. LOCATION OF PROPERTY

The applicant's property must have sustained damage while located within the geographic area identified in the disaster declaration.

- a. Victims whose primary residence is mobile such as a boat, motor home, or travel trailer are eligible if the residence was located within the declared area at the time of the disaster.
- b. A traveler's personal property temporarily located in a declared area at the time of the disaster is eligible.

19. PRIMARY RESIDENCE ELIGIBILITY

Although some applicants may have more than one residence, for SBA disaster loan eligibility purposes, an applicant can have only one primary residence [see limited exception at subparagraph 13.n.(2)].

a. Determination of a Primary Residence.

- (1) For either a homeowner or a renter, a damaged residence (e.g., house, apartment, condominium, manufactured home, etc.) is eligible only if it is the applicant's primary residence.
- (2) Generally, every applicant has only one primary residence. This becomes an eligibility issue when the applicant owns more than one piece of real property, or rents more than one apartment or home simultaneously. In these cases, the information in the loan application package will frequently provide the necessary explanations. For example, if an application indicates ownership of two residences, but one of them is clearly substantiated by Federal Income Tax Returns (FTR) as rental income property, no further inquiry is necessary to establish the other home as the primary residence. However, if you cannot readily determine which is the applicant's primary residence use the following factors.
 - (a) An applicant has filed for homestead exemption or similar filing in those states that permit these filings. Similarly, in some tax jurisdictions, an applicant's home may be taxed at a preferred rate based on owner-occupancy status, which confirms primary residence status.

- (b) Address used for voting purposes.
 - (c) Address used for identifying the school district to which children are assigned.
 - (d) Address used on FTR.
 - (e) The residence used the greatest percentage of the year.
 - (f) Other similar factors.
- b. Mixed-use Structures. When an owner of a mixed-use structure occupies a portion or unit as their primary residence, eligibility for damages is based on the following criteria.
- (1) The home verification will include all structural and common areas of the real estate. The rental unit(s) will be verified in a “skin-in” fashion (interior flooring, paint, trim, finish, etc.). This apportions the bulk of the disaster loss to the home loan verification.
 - (2) In the instance where the property is totally destroyed or damage amounts approach the administrative limit, the above approach will not apply. The Loss Verifier will assign the exterior and structural damage to the business worksheet or verify total loss amounts and pro-rate accordingly between the home loan and business loan. The verification report should reflect the appropriate comments.
 - (3) The Fair Market Value (FMV) of the real estate is fully assigned to the home loan verification.
 - (4) Personal property losses or nonreal property losses should be addressed in their respective case files.
- c. Primary Residence Located on a Farm. A primary residence located on a farm is eligible. All home loan criteria apply to these applications (see paragraph 21).

20. LOW INCOME HOUSING AND PRIVATE NONPROFIT ORGANIZATIONS

SBA implements its disaster loan program when the President declares a major disaster, or declares an emergency, and activates FEMA’s Individual Assistance (IA) and/or Public Assistance (PA) programs.

- a. Low Income Housing.
- (1) Congress recognized that a private sector developer may not receive enough rental income from a low-income housing project to (1) cover the costs of developing and operating the project and (2) provide a return to the investors sufficient to attract the equity investment needed for development. Tax credits have been provided as a means to stimulate the development of new and rehabilitated rental housing for low-income households.

- (2) Nonprofits play an important role in providing low-income housing and their ability to joint venture with for-profit concerns has increased the number of projects developed. This arrangement is generally accomplished by the creation of a partnership with the for-profit concern that is designated as the limited partner and 99-percent owner. This structure allows the private nonprofit the control of the project while providing the investors the tax benefits related to the tax credits. The agreements generally provide that the limited partners have no obligation for operating or capital costs after their initial investment, and require the general partner make up any operating deficits.
 - (3) Generally, we use our standard criteria for determining repayment ability, credit elsewhere, and similar matter for PNPs. However, because of the special treatment afforded low-income housing partnerships as described above and set forth in Section 42 of the Internal Revenue Code the following procedures shall apply to such applicants:
 - (a) The limited partnership and its general partner (private nonprofit entity) operating the low-income housing project shall be designated as the SBA disaster loan applicant, provided that it is organized and operating in accordance with Section 42 of the Internal Revenue Code.
 - (b) In determining repayment ability and credit elsewhere, only the tax and financial information on the limited partnership and the general partner shall be considered. (Often the limited partnership and the general partner may not have repayment ability because any cash flow that could be used for SBA loan payments would come from the operating budget that must provide low-income housing. Further, every dollar of debt service would have to be offset with rent increases or grants from other government programs or private donations).
- b. Private Nonprofit Organizations.
- (1) A PNP facility, which provides noncritical essential services of a governmental nature, must first apply to SBA for a disaster loan for permanent repairs and/or replacement work, before it can seek grant assistance from FEMA with respect to such noncritical services. If SBA determines the PNP noncritical facility is ineligible for a disaster loan or the PNP has obtained the maximum amount for which SBA determines the facility is eligible, the PNP may then apply to FEMA for grant assistance for permanent repairs for its unmet disaster-related needs. Such PNPs may apply directly to FEMA for emergency repairs.
 - (2) Use our standard criteria for determining repayment ability and credit elsewhere.

21. AGRICULTURAL PROPERTY ELIGIBILITY

Agricultural property is not eligible. However, the applicant's primary residence, personal property contained therein, and access road to the residence are eligible under home loan criteria (see subparagraph 32.h.).

22. REPAIR OR REPLACEMENT COST ELIGIBILITY FOR STRUCTURES

The purpose of physical disaster loans is to return the victim's property as nearly as possible to its predisaster condition (within statutory, regulatory, and policy limitations described in this SOP). Generally, the dollar eligibility for structures is the cost to repair or replace the underinsured or uncompensated damage.

- a. Types of Structures. Generally, all structures and buildings are eligible. For home loans, nondwelling type structures such as garages, storage sheds, guest houses, etc., whether attached or detached, are eligible (see limitations at paragraphs 27 and 33). Similarly, for business loans, most structures and outbuildings are eligible unless specifically limited.
- b. Types of Repair or Replacement Costs. Costs associated with repair or replacement of disaster damaged structures are either direct or indirect. The LV is responsible for determining these costs. You must have a thorough understanding of why certain costs are or are not included in the disaster loan and be able to clearly explain this to the applicant.
 - (1) Direct Costs. In addition to the actual costs to physically repair the property, there may be other costs associated with rebuilding such as code required upgrades.
 - (2) Indirect Costs and Expenses. Certain other costs and expenses associated with repairing or replacing structures are eligible. Often these were not known to the LV at the time of the original site inspection and were not included in the LV's report. Examples of indirect costs include (but are not limited to): engineering fees, survey costs, architectural fees, initial insurance premiums, etc. If known at the time of processing, you may include these expenses in the loan amount. If discovered after loan approval, you may increase the loan. You must consult with the appropriate department (i.e., Loss Verification or Legal) before including any indirect costs in the loan amount.
- c. Costs in Excess of Predisaster FMV. The ADLP, or an SLO designated by the ADLP, must approve all cases where the recommended loan amount for structural repair or replacement exceeds the predisaster FMV (with the exception of manufactured housing used as residences).
- d. National Register of Historic Places. You must seek supervisory guidance prior to processing buildings or structures included in or eligible for the National Register of Historic Places.
- e. Special Provisions Applicable to Rental or Investment Properties. If the predisaster FMV of a rental or investment property (not owner-occupied residences or commercial real estate occupied by the owning business or an affiliate) is depressed because of factors other than the disaster itself (e.g., substantial deferred maintenance), eligibility cannot exceed the predisaster FMV. This restriction avoids providing subsidized disaster funds on favorable terms to owners who have not adequately maintained their property. It also accounts for otherwise depressed economies and real estate markets. This exception applies regardless of whether the owner intends to repair, replace, or relocate. (Owner-funded upgrades or improvements are permitted.)

- f. Deferred Maintenance. The LV will address deferred maintenance during the on-site inspection. Minor deferred maintenance which must be dealt with in order to make disaster repairs is eligible. However, other deferred maintenance is not eligible. You must rely upon the LV's report when establishing eligibility in these cases.
23. MANUFACTURED HOUSING (MH) ELIGIBILITY
- a. Use of Manufactured Housing.
- (1) MH used as the applicant's primary residence is processed under home loan criteria.
 - (2) MH held for resale is inventory and processed under business loan criteria.
 - (3) MH used for rental income purposes is processed under business loan criteria.
 - (4) MH used for any other purpose(s) may be eligible depending on the specific use. For example, a manufactured home used by a construction company as its on-site office would be eligible because of its usage. MH used for vacation or recreational purposes would not be eligible.
- b. Eligibility of Totally Destroyed MH. The LV will assign a replacement cost based upon square footage when a MH is totally destroyed.
- c. Documentation Required.
- (1) Requirement for MH Title. We require a copy of the title to the damaged MH to establish proof of ownership unless it is permanently attached to the land in which case it may not be titled. When taking the damaged MH as collateral, no other proof of ownership is acceptable. **Generally, MH may come in multiple widths (double-wide/triple-wide) with separate titles for each section. In these cases, SBA will require the title for each section.**

However, when not taking the damaged MH as collateral (e.g., the loan is unsecured or the damaged MH is totaled and only the replacement will be taken), **you may establish eligibility using the criteria listed in subparagraph 88.c.**
 - (2) Other Documentation Requirements **for Secured Loans.**
 - (a) We require a legible copy of the lease if the damaged MH is/was located on leased land. If no lease exists, a letter from the landlord confirming the location will suffice.
 - (b) We require a copy of the deed if the damaged MH is/was located on land owned by the applicant.
 - (c) A landlord's waiver is not required when the owner of the MH is not the owner of the land where the MH is located.

24. CONDOMINIUM ELIGIBILITY (INDIVIDUAL UNITS AND CONDOMINIUM ASSOCIATIONS)

Condominiums present unique issues which require different methods for establishing property eligibility and special provisions and considerations during processing. Any application where the damaged property is a condominium (individual unit or association-owned or common areas) should be identified and handled separately from the onset.

- a. Distinguishing Individual Unit Owners from the Association. Center Counsel or designee must review all pertinent documents, including the association's Conditions, Covenants, and Restrictions (CC&Rs), Articles of Association, and applicable State or local laws to ascertain the rights and responsibilities of the condominium association and individual unit owners.
- b. Individual unit owners are eligible to apply for the damages to their own units. The loan classification (home or business) depends on whether the unit is owner-occupied as a primary residence or whether it is used for business purposes (such as a rental). Units classified as secondary homes are ineligible.
 - (1) Generally, **each Field Office/or the PDC** will implement procedures to promptly identify any condominiums located in the disaster area. A group of designated LOs should process all individual unit owner applications from a particular condominium association.
 - (2) Because of the potential overlap of the individual unit owners' damage with that of the association-owned portions of the property (e.g., interior/exterior wall, interior ceiling/exterior roof), before processing begins, you should have an understanding of how the entire condominium complex will be repaired or replaced.
- c. General Eligibility Rule.

If you process loans to individual unit owners before the association determines how it will fund repairs to the common area, we will fund only the borrower's personal property and unit repairs. In these cases, the following condition must appear in the individual unit owner's LAA:

"Prior to any disbursement of loan funds for real estate repair, Borrower will provide written evidence satisfactory to SBA that Borrower's repairs will not be damaged or destroyed when the association makes repairs to the common area. Borrower may meet this condition by submitting a letter from the association, or its structural engineer, confirming same. Borrower may also meet this condition by delaying Borrower's repair of the unit until after the association has completed repairs to the common area."

- (1) When the LV's report indicates the individual units can be made habitable with only minor interior repairs, proceed with processing these individual unit owner loans. However, when major interior and exterior repairs are necessary and individual units cannot be made habitable without the association being involved in the rehabilitation process, individual unit owners generally cannot be considered for anything other than personal property eligibility until the association meets and agrees on a formal course of action.
- (2) If the association chooses not to apply for an SBA loan and instead passes a one-time assessment to unit owners equal to the amount necessary to make common area repairs, the unit owners are eligible for their pro-rata shares of the amount of the assessment as well as for the interior damages to their individual units and personal property (PP), subject to program lending limits. **To validate the assessment:**
 - (a) The unit owner must provide documentation to substantiate that amount of the assessment to cover the disaster-related damage to the common areas, and/or
 - (b) The loan officer conditions the LAA to require the borrower to provide a copy of the Assessment Resolution outlining the purposes and uses for which it was approved.
 - (c) The ADLP or designee may request a review by the PDC Loss Verification Department, who will determine if the documentation is sufficient or if an on-site inspection is necessary.
- (3) When an association has suffered substantial damage and has voted not to rebuild, the unit owners are forced to relocate. In such cases, SBA considers this relocation to be mandatory.
 - (a) The unit owner is eligible for the replacement value of their personal property, their unit, and their proportionate share of the condominium's common assets, such as buildings, amenities, etc., as determined by the LV minus any insurance recovery received.
 - (b) As the unit owner also has a proportionate share of the association's master insurance policy, the loan officer must address the potential for duplication of benefits (DOB) by including the following custom stipulation in the LAA:

OC-21 Prior to disbursement of funds for real estate repair/replacement, Borrower and Borrower's Homeowners Association must jointly execute a satisfactory assignment of insurance as to Borrowers' interest under the Homeowners Association's Master Insurance Policy.
 - (c) As the unit owner has a proportionate share of the condominium's common assets, the loan officer must address the potential for DOB from the sale of the condominium complex. If SBA has not yet perfected its lien on the unit owner's condominium, the loan officer must include the following custom stipulation in the LAA:

RA-03

Borrower will promptly notify SBA of the receipt of any proceeds from the sale of the damaged property, including proceeds from the sale by the Association of all or part of the Association land, common areas or facilities in which Borrower owns a proportional interest, and Borrower will promptly submit the proceeds of same (not exceeding the outstanding balance of this Loan) to SBA. SBA will use any such proceeds to reduce the outstanding balance of this Loan, and Borrower agrees that such proceeds will not be applied in lieu of scheduled payments.

- d. The Association. The condominium association is generally eligible to apply for damages to areas of common ownership, such as hallways, parking areas, sidewalks, driveways, grounds, pools, etc.
- (1) We classify applications from condominium associations as business loans (usually as nonprofit organizations), unless specified otherwise by their articles of association. We require the following documentation to process an association's application:
 - (a) A complete copy of the CC&Rs;
 - (b) A complete copy of the by-laws and/or articles of association;
 - (c) A copy of the resolution duly authorizing the association to apply for an SBA loan;
 - (d) A complete list of names, addresses, and telephone numbers of unit owners and directors; and
 - (e) A copy of annual reports and operating budgets for the past three years.
 - (2) Prior to disbursement of any SBA loan funds, the association must inject any net insurance proceeds or any other funds necessary to complete the repairs.
 - (3) Generally, the loan officer should base the monthly installment amount on a minimum of \$25 per unit owner. Any amount less than \$25 needs proper justification.
- e. Collateral Requirements.
- (1) Individual unit owners are subject to the same collateral requirements as any other physical disaster loan recipient.
 - (2) The Association. Generally, we secure loans to associations by taking both of the following:
 - (a) A mortgage or deed of trust on the common areas owned by the association, as permitted by law; and

- (b) An assignment of a special assessment passed by the association in accordance with its by-laws, unless prohibited by law. (The association must assess each unit owner in an amount sufficient to provide loan repayment.)
- f. Special Provision for Calculating Eligibility for Refinancing. Individual unit owners are eligible for refinancing. For the substantial damage calculation, the market value or replacement value of an individual condominium unit is not limited to the value of the internal space of the particular unit. It includes the proportional share of the condominium's common assets, such as buildings, amenities, etc. This calculation must reflect the individual unit owner's proportional share of any net recovery under the condominium association's master insurance policy (see subparagraph 36.h.).
- g. Time-Share Eligibility: Individual time-share unit owners are not eligible for SBA disaster assistance. The HOA governing the time-shared property is eligible.

25. OTHER ASSOCIATION ELIGIBILITY

Other associations include, but are not limited to, Planned Unit Developments (PUDs), Cooperative Associations (Co-ops), Road Associations, Water Associations, etc. Center Counsel or designee should review applications from other types of associations to assist you in determining who the eligible parties are, and, in Presidential declarations, the best course of action to pursue for assistance.

- a. Basic Eligibility Considerations. Eligibility rests with those who owned the damaged or destroyed property at the time of the disaster.
 - (1) Formal (legal) Association Exists. If a legal entity owns the damaged property, the entity is the eligible applicant (e.g., The Happy Valley Water Well Association, Inc.). You process the application in the same manner as a condominium association.
 - (2) Formal (legal) Association Does Not Exist. Property owners who share legal responsibility for repair with one or more other property owners, but had not formed an association at the time of the disaster, may apply as individuals; or they may elect to form an association in accordance with State law and apply as an association, even though the legal formalities are not yet complete.
 - (a) For applications as individuals:
 - (i) Use a home loan application when the shared responsibility for repair is related to the applicant's primary residence;
 - (ii) Use a business loan application when the shared responsibility for repair is related to the applicant's business or rental property;
 - (iii) Prior to approval, all applicants with common responsibility must have fixed the liability proportionally among those legally responsible for the cost of the repairs, by contract or some other legally enforceable method; and

- (iv) A list of names and addresses of all who share in the responsibility for repairs should accompany the application.
- (b) For applications as an association formed after the disaster:
 - (i) The newly created association must complete its legal formalities prior to loan approval; and
 - (ii) A list of names and addresses of all members must accompany the application.
- b. Eligibility for Common Road Damage. SBA eligibility and the handling of applications to repair common road damage will depend on the disaster declaration.
 - (1) In Administrative declarations SBA is generally the only form of assistance available to repair common road damage.
 - (2) In Presidential declarations applicants should first be referred to FEMA or other appropriate agencies.

26. LAND ELIGIBILITY

- a. Land Associated with a Primary Residence or Business Operation. Damages to land and soil are eligible. Most damage of this type is caused by flooding or other forms of moving water. Soil washouts and similar damages caused by excessive rainfall and flooding are eligible provided the cause is a direct result of the specific declared disaster. However, erosion or similar damage is not eligible, because it occurs over time and is not the direct result of any single declared disaster event. We limit eligibility to the cost of restoring the land to its predisaster condition (for exception regarding necessary protective devices, see paragraph 40).
 - (1) If you determine land damage caused by a specific disaster is eligible, you must consider the potential for recurring or continuing damage. You may approve funds to restore land damage if:
 - (a) A shoreline or waterway boundary is stable to the point that future water damage is not likely to occur as the result of high tides, wind-driven water, wave action, or stream flows which might reasonably be expected but which would not constitute a new disaster declaration; or
 - (b) The victim has used other resources to fund the installation of protective devices which will prevent expected high tides, wind-driven water or wave action, or stream flows from causing further land damage. In some cases, the cost of protective devices is eligible, as provided in paragraph 40.
 - (2) Damage to land improvements is eligible unless specifically excluded or subject to the landscaping limitations described in paragraph 27. Some examples of eligible land improvements are: paving, walkways, driveways, fences, retaining walls, **seawalls**, septic systems, drainage systems, culverts, and various protective devices.

b. Unimproved Land.

- (1) General Rule. Unimproved land is not eligible for disaster loan assistance. This includes land held for speculation, investment, or future development.
- (2) Exceptions to the General Rule.
 - (a) Home Loans. The usual test of an eligible primary residence is occupancy, but an owner of a lot (generally not larger than an acre unless required by zoning laws) may be eligible for a home loan depending on the circumstances. For example:
 - (i) A lot owner may be a renter residing nearby and actively engaged in the construction of a residence at the time of the disaster loss. The residence may already be under construction; or the landowner may have already incurred expenses for plans, obtained the necessary permits, or engaged a contractor to commence construction. If the disaster loss is to the property where the owner was currently and actively in the process of establishing permanent residence and where the applicant has no other permanent residence (as would be the case for a renter in this example), the property is eligible.
 - (ii) The same result might occur when the lot owner previously lived and was employed elsewhere, recently was transferred, and purchased a lot and has taken steps to initiate the construction process, and has begun selling the previous residence or converting it to business property.
 - (b) Business Loans. Ownership of unimproved land actually used in the operations of a business concern rather than land held for investment, speculation or future development purposes may be eligible. For example:
 - (i) A business whose established activity is buying and selling unimproved land or developing it for resale or rent (a developer) may own unimproved land. Since this activity is an integral part of normal business operations, damage to unimproved land is eligible. Usually, a business concern engaged in an activity involving ownership of unimproved land is readily distinguishable from an individual or group holding ownership of land for other purposes.
 - (ii) A business may own an unimproved lot on which construction of a new facility is underway. Evidence of the building process includes building permits, architect's plans, engineering studies, or other preliminary steps.

27. LANDSCAPING ELIGIBILITY

- a. Definition. As used in this paragraph "landscaping" includes the replacement of trees, shrubs, hedges, sod, private swimming pools, and private tennis courts (and items or structures associated with their use, such as a cabana used as a bath house).
- b. General Rule. Eligibility for disaster damaged landscaping is limited to the lesser of the verified loss to landscaping or \$5,000. This limitation applies to both residential and commercial property. Normally, trees, shrubs, hedges, etc., will be replaced with saplings or young bushes and shrubs. There will seldom be any justification for using mature plantings as replacements. Docks, boat houses, and any related facilities generally used for recreational purposes are also subject to the landscaping limits.
- c. Exceptions to the General Rule.
 - (1) The limit does not apply to docks and other related facilities when water transportation to and from the primary residence is necessary.
 - (2) Detached buildings such as garages, storage sheds, guest houses, etc., which are not predominantly used for recreational purposes are normally eligible, together with the main house itself, subject to the administrative limit.
 - (3) Business applicants whose disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business are not subject to landscape limits. For example:
 - (a) A row of trees that constituted a windbreak;
 - (b) The plantings in an atrium or solarium used by patients in a facility providing medical care for the public; or
 - (c) Swimming pools, tennis courts, squash courts, handball courts, etc., when the damaged facility constitutes an integral part of the plan to attract business (e.g., hotel, motel, resort, etc.).
 - (4) Other Exceptions. The following are not included in the landscaping limits:
 - (a) Fill for disaster washouts (as opposed to long-term erosion from natural causes) that must be replaced and is part of the damage to land;
 - (b) The cost of clearing downed trees, shrubs, hedges, etc. (if not done by the community, Corps of Engineers, etc., as part of the total disaster cleanup); and
 - (c) Minimal ground cover (if the most practical and feasible method for necessary ground stabilization).

28. VEHICLE ELIGIBILITYa. Definitions.

- (1) Vehicle means any automobile, truck, tractor-trailer, van, mini-van, motorbike, motorcycle, or other form of motorized ground transportation.
- (2) Recreational Vehicle (RV) means any motor home, camper, truck, van, motorbike, motorcycle, all-terrain vehicle, or any other form of transportation used primarily for recreation or relaxation.

b. General Rule. Vehicles (without limit as to number) are eligible subject to the provisions and limitations of this paragraph.c. License Requirements. Vehicles which were not properly licensed at the time of application are not eligible. "Not properly licensed" means the vehicle could not be legally operated on public highways.d. Exceptions to the General Rule.

- (1) Unlicensed Vehicles. An unlicensed vehicle may be eligible as follows:
 - (a) Where limited or special use does not require licensing (e.g., a bus used to shuttle workers exclusively within the confines of a plant or job site; or a vehicle used exclusively on an Indian reservation for commuting);
 - (b) Where the vehicle(s) are inventory of a business applicant; or
 - (c) Where the vehicle was held for its scrap value.
- (2) Recreational Vehicles.
 - (a) A recreational vehicle, such as a motor home or a camper, may be considered eligible for home loan assistance if it is the applicant's primary residence.
 - (b) A recreational vehicle, such as a boat or a snowmobile, may be considered eligible for home loan assistance (as personal property) if it is the applicant's only method of accessing their primary residence.
 - (c) Recreational vehicles may be considered eligible for business loan assistance (as machinery and equipment) if:
 - (i) All expenses connected with the operation of the vehicle, including depreciation and maintenance costs, are deducted as business expenses on the FTR, or
 - (ii) The vehicle(s) qualify as inventory of a wholesale or retail business concern.

29. VESSEL AND AIRCRAFT ELIGIBILITY

This paragraph addresses eligibility of commercial boats, ships, vessels, and aircraft. All other noncommercial and recreational crafts are either not eligible or subject to limits in paragraph 28.

- a. General Rule. Subject to the provisions of this paragraph, commercial vessels and aircraft are generally eligible under business loan criteria if they were licensed by the proper authority for commercial use at the time of the disaster.
- b. Vessel. A vessel must be properly registered in the state where it is operated and utilized in a commercial activity at the time of the disaster. If the state registration does not identify the authorized use of the vessel, you must use other verification such as tax returns, receipts for sale of the catch, etc. If the vessel is documented with the U.S. Coast Guard, the authorized use is listed on the documentation papers.
- c. Aircraft. An aircraft must be properly registered (licensed) with the Federal Aviation Administration (FAA), have a current and valid "Certification of Airworthiness" (issued by the FAA), and be utilized in a commercial activity at the time of the disaster. In all cases, the FAA will identify the authorized use of the aircraft.

30. HOME LOAN PERSONAL PROPERTY (PP) ELIGIBILITY

- a. General Rule. Eligibility for PP losses rests with the individual(s) who owned the damaged or lost property at the time of the disaster. Generally, no upgrading is permitted.
- b. Definitions.
 - (1) Personal Property (PP). For disaster home loan purposes, PP means ordinary household contents, such as furniture, appliances, clothing, etc., including eligible vehicles, which the applicants would normally take if they moved.
 - (2) Household. For disaster loan purposes, a household is defined as all persons residing in the dwelling who are claimed as dependents on the applicant's FTR. For example, college students living full time in their parents' home do not have separate eligibility for losses to their PP if they are dependents on their parents' FTR. However, if students living full time with their parents are not claimed as dependents on their parents' FTR, they have eligibility similar to unrelated tenants. The LV must determine that there is no duplication of PP eligibility within the household.
- c. Limitations. Nonessential or atypical items (e.g., extraordinarily expensive, irreplaceable or luxury items, or uncommonly large quantities of ordinary items) may have limited eligibility based on functional or ordinary value or quantity. The LV makes these determinations and applies appropriate limitations.

- (1) Functional Value. For very expensive or luxury items with functional use, eligibility is limited to the cost of an ordinary item meeting the same functional purpose. For example, a fur coat would be replaced with a cloth coat.
 - (2) Quantities. For very large quantities of ordinary items, eligibility is limited to the replacement cost of ordinary quantities.
 - (3) Items with Limited Eligibility. Items with limited eligibility include, but are not limited to:
 - (a) Antiques;
 - (b) Expensive or rare artwork, objects of art, or collections;
 - (c) Expensive or extensive wardrobes or clothing collections, including furs (Items essential to the applicant's occupation, such as actor or model, are not subject to this limitation);
 - (d) Collections of otherwise commonplace items (books; musical equipment, tapes, or compact discs; audio or visual equipment or tapes; sports equipment, guns; etc.). Items essential to an applicant's occupation (attorney, writer, photographer), are not subject to this limitation (see paragraph 31);
 - (e) Alcoholic beverages (maximum \$250 per application).
 - (f) Disaster-related moving and storage expenses for homeowners are eligible [See subparagraph 31.a. for eligibility for disaster-related moving and storing business contents]. For example, a person recognizes (or is told by local emergency management officials) that their home is going to be flooded, and in an effort to lessen their disaster-related losses they move and store personal property items out of harms way. The home is flooded and the victim subsequently moves their personal property back to the disaster repaired property. In this scenario, the moving and storage expenses would be eligible. However, if the home was not damaged as a result of the disaster, moving and storage expenses would not have eligibility. Moving and storage expenses are also eligible in mandatory relocation situations.
 - (i) Allowances above \$3,000 must be substantiated and documented.
- d. Ineligible Personal Property. Some PP items are ineligible. Examples include, but are not limited to:
- (1) Cash, including coin collections; lottery tickets; stocks; bonds; and other negotiable instruments;
 - (2) Recreational vehicles as defined in subparagraph 28.a.(2);
 - (3) Pets and other animals; and
 - (4) Hobby items which have little or no functional value, such as stamp collections, butterfly collections, autograph collections, etc.

31. BUSINESS CONTENTS ELIGIBILITY

Eligibility for business contents rests with the person or legal entity who owned the damaged or lost property at the time of the disaster. [See possible exceptions in subparagraph 13.k.(1)]. For disaster loan purposes, business contents means any machinery and equipment (M&E), inventory, furniture and fixtures (FF), or office equipment damaged or destroyed by the disaster. [See possible moving and storage expenses in paragraph 37.e.(1)(c)(vi)]. Replacement of business contents must be, to the extent possible, of the same quality and capacity as the property lost (no upgrading is permitted).

- a. Disaster-related moving and storage **expenses for businesses** may be eligible. For example, a business owner recognizes (or is told by local emergency management officials) that their **business is** going to be flooded, and in an effort to lessen their disaster-related losses they move and store business contents out of harm's way. The business is flooded and the victim subsequently moves the contents back to the disaster repaired property. In this scenario, the moving and storage expenses would be eligible. However, if the business was not damaged as a result of the disaster, moving and storage expenses would not have eligibility. **Allowances above \$5,000 must be substantiated and documented.**
- b. Moving and storage expenses are also eligible in mandatory relocation situations

32. INELIGIBLE PROPERTY

The following property is not eligible for disaster loan assistance.

- a. Condemned Structures. Any structure, residential or commercial, condemned or refused an occupancy permit by the proper authority before the disaster occurred.
- b. Secondary Homes. Secondary homes such as vacation homes, cabins, cottages, chalets, and their contents, which are used for leisure and enjoyment by the owner.
- c. Any building and its contents, including a boat house, located seaward of mean high tide or entirely in, on, or over water without an established business need, and which was constructed or substantially improved after February 9, 1989, is not eligible. A structure other than a building, such as a dock, **or pier** is eligible for SBA assistance, but is subject to the landscaping limits defined in paragraph. 27.
- d. Publicly Owned Property. Public roads, highways, bridges, municipal buildings, etc.
- e. Property Not Located Within the Disaster Area. Any property not located within the declared disaster area at the time of the disaster.

- f. Coastal Barrier Islands. The Coastal Barrier Islands Resources Act prohibits financial assistance for any purpose within the Coastal Barrier Resources Systems (CBRS). The only loans permitted are for PP of transients or short term tenants (e.g., vacationers). Maps of the specific CBRS are available from the Department of the Interior. If a Coastal Barrier Resource Area (COBRA) is included within a declared disaster area, SBA Form 2121, Notice To All Applicants, must be issued with all disaster applications for that declaration. The affected **Field Operations Center** must notify the Mailout Center when there is a disaster declaration where this form should be included.
- g. Seasonal Occupancy on Leased Land.
- (1) General Rule. Lessees who are only permitted to occupy their dwellings on a seasonal or recreational basis are ineligible. This also applies to MH situated on leased land and vessels moored in a leased slip where the lease does not permit occupancy as a full-time primary residence.
 - (2) An exception occurs when the lessor acknowledges in writing that:
 - (a) The lessee was not in compliance with the lease provision for only seasonal or recreational occupancy prior to the disaster; and
 - (b) The lessor had chosen not to enforce the lease restriction; and
 - (c) The lessee is and will be permitted to continue to occupy the dwelling, MH, or vessel as a permanent, year round primary residence.
 - (3) Approval under this exception requires:
 - (a) **Disaster-specific authorization from AA/DA.**
 - (b) Final action by the ADLP or higher.
- h. Agricultural Enterprises.
- (1) Businesses primarily engaged in agriculture are not eligible (**see paragraph 15.g.**). However, a business may be primarily an agricultural enterprise, but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc. Disaster loan proceeds may not be used to repair or replace physical agricultural losses.
 - (2) A business which is primarily engaged in an eligible activity and secondarily engaged in an agricultural enterprise is prohibited by regulation from using disaster loan proceeds to repair/replace physical agricultural losses.
 - (3)** As used in (1) and (2) above, the business includes the applicant business and its affiliates.

- i. Nurseries. Nursery farms are not eligible (see subparagraph 13.m. for **physical loans** and subparagraph 121.d for EIDL).
- j. Property Located in an SFHA within a "Nonparticipating" Community or a Community "Under Sanction." Small Business Administration funds may not be used to repair or replace real or personal property located in an SFHA within a nonparticipating community or a community under sanction. In these communities, Federal flood insurance is unavailable and borrowers cannot purchase the statutorily required flood insurance. However, relocation assistance is available.
- k. Property Covered by Notice of Disqualification.
 - (1) If a notice of disqualification of flood-prone property was previously filed of public record, the property is ineligible. However, the AA/DA, CD/PDC or their designee may remove the ineligibility upon notice from the Flood Insurance Administration (FIA) of the following:
 - (a) Adequate flood control measures have been completed and the property is no longer flood-prone; or
 - (b) Property improvements on the land were constructed after the community started participating in the FIA flood insurance program and both layers of flood insurance may be purchased.
 - (2) If the ineligibility is removed, the Center Counsel or designee may issue to the present property owner an instrument canceling the original recorded notice of disqualification. This instrument becomes effective when recorded in the local land records office where the recorded notice of disqualification was filed.
 - (3) Notices of disqualification covering property located within an identified M (**mud-flow**) or E (**erosion**) Zone may be similarly treated (see subparagraph 51.a.(4)).

33. LIMITED-USE ELIGIBILITY

If an otherwise eligible structure (primary residence or commercial building) was utilized for purposes other than its intended or customary use, we limit eligibility to the lesser of the current or intended use. Thus, if the structure was excessive in size or quality for the use it had at the time of the disaster, it will be restored only to the current use. For example, a cottage or house appurtenant to a primary home was being used for storage purposes. Loan eligibility to repair that structure is limited to the lesser of the cost of a similar sized storage unit or its intended use as a cottage.

34. RESERVED

35. RESERVED

CHAPTER 4

ADDITIONAL ELIGIBILITY: REFINANCING, RELOCATION, MITIGATION36. REFINANCING

Refinancing is available to help create repayment ability. When a property is substantially damaged, refinancing of recorded liens can make the additional disaster debt more affordable.

a. General Rule. By statute, all or part of all loans secured by recorded liens on homes or business concerns substantially damaged by the disaster may be refinanced with additional disaster loan proceeds.

(1) Home Loans. We can only consider the eligible RE (primary residence of the applicant, including MH, individual condominium units, and houseboats) for refinancing.

(2) Business Loans. We can only consider the eligible RE or M&E which is essential to the operation of the business for refinancing. Property used by the applicant business in a manner which is analogous to M&E is treated similarly for this purpose (e.g., furniture, carpets, drapes, linens, appliances, etc., in a hotel or motel).

(3) Nonprofit Organizations. Nonprofit organizations are not eligible for refinancing because they do not meet the definition of a business concern as defined in 13 CFR §121.105.

b. Definitions.

(1) Uncompensated Damage means SBA's verified physical loss to the property in question (regardless of legislative or administrative limits) **as determined by the LV** less any insurance or other recoveries and excluding any funds due to contractor malfeasance.

(2) Fair Market Value (FMV) is based upon local market conditions and is what the property would sell for one day before the disaster occurred.

(3) Replacement Cost means the cost to completely reconstruct the damaged structure and restore the entire property to its predisaster condition.

(4) Substantially Damaged means uninsured or otherwise uncompensated damage of either:

(a) For homes: uninsured or uncompensated damage, which at the time of the disaster, is either:

(i) 40 percent or more of the home's fair market value (FMV) or replacement cost at the time of the disaster, including the value of any land, whichever is less; or

(ii) 50 percent or more of its fair market value or replacement cost at the time of the disaster, excluding the value of any land, whichever is less.

- (b) For businesses: uninsured or uncompensated damage which, at the time of the disaster, is either:
 - (i) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including the value of any land) and damaged machinery and equipment; or
 - (ii) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding the value of any land) and damaged machinery and equipment.

(c) While it may be helpful in verifying the losses, loss documentation by local authorities is not required by SBA to make the substantial damage determination.

- c. Applicant Eligibility Requirements for Refinancing. By statute, applicants must meet three requirements to be eligible for refinancing consideration:
 - (1) The applicant's property must be substantially damaged;
 - (2) The applicant must not have credit available elsewhere; and
 - (3) The applicant must repair or replace the damaged property.
- d. Liens Eligible for Refinancing. Liens subject to refinancing must have existed prior to the disaster. The actual position (i.e., first, second, etc.) and original purpose of an otherwise eligible lien has no effect on refinancing eligibility.
 - (1) For real property in both home and business loans, only debts secured by a recorded mortgage, deed of trust, or similar instrument are eligible.
 - (2) For M&E in business loans, only debts secured by a recorded security instrument are eligible. For blanket liens where you cannot distinguish which portion of the lien relates to M&E, refinancing may be offered if all other relevant criteria are met.
- e. Liens Not Eligible for Refinancing.
 - (1) Any mortgage or other lien owned by a Federal, State, or local government agency.

NOTE: Liens are eligible when the private debt is insured or guaranteed by a Federal agency (provided the private lender owns the debt and it has not been repurchased or otherwise assumed by the Federal agency). We do not consider the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) Federal agencies for this purpose. An SBA guaranteed debt is eligible for refinancing as long as the debt has not been repurchased or is not owned by SBA. In addition, state housing finance authorities which, pursuant to Federal law, fund such mortgages or liens by issuing Federal tax exempt mortgage bonds for the purpose of encouraging home ownership for low and moderate income families, are not considered a state agency for this purpose.

- (2) Liens due to unpaid taxes, mechanics liens, or similar attachments.
 - (3) Liens on business inventory (payments on liens on inventory may be appropriately addressed with EIDL assistance).
- f. Interim/Bridge Loans. We do not consider repayment of these loans refinancing.
- g. Amounts and Dollar Limitations of Refinancing. By statute, refinancing eligibility must not exceed:
- (1) Homes. The lesser of the amount owing on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the RE.
 - (2) Businesses. The lesser of the amount owing on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the RE and M&E.
- h. Calculation of Substantial Damage. Your initial calculation is based upon figures in the LV's report. You may need to adjust these figures for insurance or other recoveries. Adjustments may also be necessary because the LV's report may not reflect the fair market values of all of the applicant's property, which may include undamaged property as well.
- (1) Components of Final Calculation (Homes). You must not include any property adjacent to the damaged primary residence in the calculation if the other property has a separate deed.
 - (2) Business Loans. The determination of substantial damage pertains to the applicant business, not just to the damaged property. You must consider each business applicant as a single entity. You do not aggregate with its affiliates for this purpose.
 - (a) Exception for Sole Proprietors (Including Multiple Rental Properties). If one of the ventures or locations sustained substantial damage, but the others suffered little or no damage, you can establish eligibility for refinancing for the damaged ventures or locations if any of the following conditions apply:
 - (i) The individual property is listed on a single mortgage or deed of trust and sustained the percentage of damage necessary to establish eligibility individually; or
 - (ii) If the damage to multiple properties is so substantial that the aggregate of the total damage would satisfy the percentage requirement for refinancing for all the properties if they were taken as a group, then you should take them as a group. This could make an individual property (on a single mortgage or deed of trust) eligible for refinancing even though the property, standing alone, did not suffer sufficient damage; or

- (iii) If a single mortgage or deed of trust covers more than one of the properties, you must consider the damaged properties covered by the mortgage or deed of trust as a group, rather than individually. The damage for the group must meet the required percentage; or
 - (iv) When the business premises are within the home of the sole proprietor, you must aggregate the business and home damage to determine if the required percentage is met.
- (b) Partnerships and corporations are distinct legal entities. You do not aggregate property owned by either the principals of the entity or any of its affiliates, when determining substantial damage. However, you must aggregate all property(s) owned by the applicant partnership or corporation (damaged or not) to arrive at the denominator. You include only the uninsured damage to the property in the numerator.
- (c) Machinery and Equipment Damage Only. If the uninsured damage is only to M&E, the calculation must include the value of all business RE owned.
- (3) Effect of Code Requirements on Substantial Damage Calculation.
- (a) General Rule. If the applicant is repairing the damaged property, you should include the cost of code-required upgrading as part of the damage when you calculate eligibility for refinancing; that is, the numerator of the substantial damage calculation would include the eligible physical loss to the RE plus the cost to comply with code requirements. This provision applies to all code-required upgrades, regardless of what caused the damage. If the applicant is relocating, you do not include the cost of the code requirements as part of the damage when you calculate refinancing eligibility.
 - (b) Exception to the General Rule. The ADLP or higher must approve this exception. Use the higher of the costs (actual loss less insurance plus code-required upgrades vs. replacement cost less insurance) in the numerator of the substantial damage calculation if:
 - (i) The general rule above would result in reduced or no eligibility for refinancing; and
 - (ii) The loan request would be declined for lack of repayment ability; and
 - (iii) The applicant plans to relocate from an SFHA to a non-SFHA instead of rebuilding at the damaged site.
- (4) Insurance recoveries must be deducted in determining uncompensated damage. Therefore, you should not offer refinancing until an applicant's insurance recovery is finalized.

(5) Other recoveries (e.g., CDBG grants) must also be deducted in determining uncompensated damage only if the refinancing funds have not been disbursed. **If the refinancing portion of the SBA disaster loan has been fully disbursed, SBA is not obligated to recalculate the homeowner's refinancing eligibility.**

(6) Applicants Request (or Need) for Reduced Physical Loan Amount.

- (a) If the uncompensated loss meets or exceeds the substantial damage criteria, but the applicant, through other means, completes the repairs for less than that amount, you must use the uncompensated loss as the basis for calculating substantial damage. This includes situations where the applicant does the actual work or acts as the general contractor, etc.
 - (i) If the difference between the verification report and the actual cost is large, or cannot reasonably be explained, you should raise questions about the accuracy of the LV's report.
 - (ii) If we determine the verification to be faulty and the refinancing funds are not disbursed, Center Counsel or designee must review the case to see if the mistake can be corrected.
- (b) When the applicant specifically elects not to repair or replace all the damage:
 - (i) If we know this at the outset (not considering question of collateral), there may be no eligibility for refinancing under the law because the damage to be repaired may be less than substantial. The law requires that the property must be substantially damaged and repaired or replaced.
 - (ii) If we do not know this in advance, the mandatory paragraphs in the LAA requiring the return of refinancing proceeds take effect.

i. Authorized Refinancing.

- (1) For home loans, you can authorize refinancing according to appendix 26, subparagraph 3.d.
- (2) For business loans, you can authorize refinancing if, based upon a reasonable payment amount which affords the applicant some flexibility and avoids hardship, the amortization of the loan amount would require more than 15 years. You cannot authorize refinancing when the amortization of the loan would require 15 years or less.

j. Partial Refinancing. When circumstances do not permit full refinancing (e.g., lien balance exceeds eligible physical loss), you must consider partial refinancing. If more than one prior lien is eligible, you need to determine the most beneficial way to apply the refinancing eligibility. You should consider the remaining terms, interest rates, installment payment amounts, and any other pertinent factors, which will best assist the applicant (see subparagraph 36.m.).

- k. Contact with Prior Lien Holders. You must request a confidential credit report from each lien holder when considering refinancing.
- (1) You should first contact the lien holder(s) and attempt to obtain the information over the phone to avoid delays. However, if phone contact is not possible or if the lien holder will not respond to a phone contact, the request must be in writing, using the credit inquiry letter format in **SBA Form 143**.
 - (2) If the lien holder does not respond to the request for the information, you should ask the applicant to urge them to honor your request. If the lien holder still does not provide the requested information, you must document that result and the efforts made in the case file. Consult your supervisor before proceeding.
 - (3) If the report indicates a poor payment history before the disaster, you must ascertain the cause(s). If the applicant has routinely had problems in making the payment on the existing lien, you must consider if a decline is appropriate.
- l. Prepayment Penalties. A prior lien holder may have a legal right to enforce a prepayment penalty if we refinance all or any part of the existing lien(s). Whenever the lien holder elects to enforce a prepayment penalty clause:
- (1) You should seek to have it waived; and
 - (2) If the lien holder agrees to waive it, obtain written confirmation at loan closing.
- m. Reamortization. When the prior liens cannot be fully refinanced and some unpaid balance will remain, you must carefully consider the level of the payments for the disaster loan combined with payments on the remaining unpaid balance. In partial refinance cases, a reamortization of the remaining balance must be negotiated with the prior lien holder(s) as a condition of receiving the partial pay down. The applicant should assume the lead in this discussion.
- (1) You should enter into this discussion if necessary (with the applicant's consent) because lien holders may not have encountered the unique circumstances associated with a disaster loss.
 - (2) The prior lien holder must provide a commitment for financing the remaining balance. The LAA will include a condition requiring this agreement, if not previously submitted.
- n. Repayment Terms.
- (1) General Rule.
 - (a) When we fully refinance an existing lien, the SBA payment should be at least equal to the amount of the principal and interest portion of the payment to the existing lien holder.
 - (b) When we partially refinance an existing lien, the total of the applicant's payments to both SBA and to the existing lien holder for the unpaid balance generally should not exceed an amount equal to the principal and interest portion of the predisaster payment to the existing lien holder.

- (2) Exception to the General Rule.
- (a) In some cases, it may be appropriate to establish a total payment amount (including the disaster loan and remaining balances of the existing liens) lower than the amount of the payment(s) on the existing debts. Whenever you recommend a lower payment amount, you must document the case file. If the applicant was having difficulty making the payments on the existing debt(s), it is necessary to analyze the causes. If the applicant's debt load was already excessive, you must determine whether an appropriate lower payment after refinancing is possible. If not, a decline may be appropriate.
 - (b) An applicant may be able to make total payments (including the disaster loan and the remaining balances of the existing liens) greater than the amount of the payments on the existing debts. For home loans, this is based on the FDM in appendix 26. For business loans you must determine what payment amount the applicant can reasonably make while allowing a margin for contingencies and the normal variations expected during the course of business operations. If that amount is greater than the amount of the payments on the existing liens, it should be the basis for determining appropriate payment amounts to SBA (and for any remaining balance of the existing liens).
- o. Authorization Conditions Applicable to Refinancing.
- (1) Use of Proceeds (UP). Use of proceeds specifications are in the Catalog of Optional Loan Authorization Text. For home loans, use UP-05 for refinancing of RE, and UP-06 for refinancing manufactured housing. For business loans, use UP-58 for refinancing of RE, and UP-59 for refinancing M&E.
 - (2) Reamortization Requirement. When we partially refinance a prior lien, the applicant must provide us with written evidence that either the prior lien holder, or a lender of the applicant's choice, has agreed to amortize the unpaid balance in accordance with the LAA. Use stipulation OC-05 for this purpose if the existing lien holder is handling the reamortization. Otherwise, use a custom stipulation
 - (3) Return of Refinancing Proceeds. When refinancing funds are included in a disaster loan, the LAA will specify that if the borrower fails or refuses to restore the damaged property, SBA will demand return of the proceeds for refinancing.
- p. Authority to Approve Refinancing. Generally, the authority to approve refinancing accompanies the delegated authority to approve a loan. However, if the amount recommended for refinancing exceeds the amount recommended for physical loss, only the ADLP or higher can approve the loan. These cases will ordinarily involve additional risk, questions of how the applicant can address the physical loss in excess of the loan funds for that purpose, and the potential for abuse of the refinancing eligibility.

37. RELOCATION

Relocation occurs anytime the victim either elects to or is required to move from the damaged home or business to any other location. Moving next door, across the street, or across the country are all relocations. However, the reason(s) for the move determines the type of relocation, and corresponding limitations and restrictions on eligibility. In states which have walk-away statutes, you must advise the applicant of potential eligibility limits due to the walk-away policy.

- a. General Rule. By statute, we cannot provide assistance to any applicant (home or business) who wishes to relocate voluntarily outside the business area where the disaster occurred. However, we may provide assistance if a relocation is other than voluntary. Rebuilding the damaged structure at another location on the same parcel of real estate is not considered relocation unless the damaged structure was located in an SFHA and is being rebuilt in a non SFHA on the same parcel.
- b. Types of Relocations.
 - (1) Mandatory Relocation. Relocation is mandatory when a victim has RE damage and:
 - (a) Is unable to repair or rebuild because appropriate governmental authorities will not permit repair or rebuilding. This usually occurs when the victim is denied a building permit, occupancy permit, or other required permission from local, county or State officials; or
 - (b) The damaged site was in an SFHA and sustained substantial damage as defined by the NFIP and the relocation property is not in an SFHA. NFIP defines substantial damage as "damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal 50 percent of the market value of the structure before the damaged occurred." For the purposes of establishing relocation eligibility, SBA will perform the calculation based on the loss amount and property value as established by the LV. We will *not* require documentation from local authorities that the NFIP definition has been met; or
 - (c) Is unable to repair or rebuild because the condominium association has voted not to rebuild.
 - (2) Involuntary Relocation. Relocation is involuntary when the victim will be permitted to repair or rebuild, but elects to move because of "special or unusual circumstances" or "uncontrollable or compelling reasons" specifically cited in SBA's regulations (see c. and d. below).
 - (3) Voluntary Relocation. Relocation is voluntary when the victim will be permitted to repair or rebuild but instead elects to move. SBA can only fund a voluntary relocation if the applicant moves within the confines of the business area.

- (4) Business area means the municipality that provides general governmental services to the damaged business or home. If not located within a municipality that provides general governmental services, then business area means the county or equivalent political entity in which the damaged business or home is located. In unusual cases, where the municipality is comprised of more than one county (e.g., New York City), the business area will be the county in which the borrower is located. SBA does not restrict the business area to divisions smaller than a city or town (i.e., school, hospital, other special purpose districts, election wards and precincts, etc.).
- c. Special or Unusual Circumstances. When a homeowner or renter must relocate due to special or unusual circumstances, the relocation is involuntary. These circumstances include, but are not limited to:
- (1) Demonstrable risk that the business area will suffer future disasters;
 - (2) Change in employment status, such as employment transfers, relocation for a new job, lack of adequate job opportunities in the business area, or implementation of retirement plans within 18 months after the occurrence of the disaster;
 - (3) Medical reasons; or
 - (4) Special family considerations which necessitate a move outside of the business area.
- d. Uncontrollable or Compelling Reasons. When a business must relocate due to uncontrollable or compelling reasons, the relocation is involuntary. These reasons include, but are not limited to:
- (1) Elimination or substantial decrease of the market for the business product or service as a consequence of the disaster;
 - (2) Change in the demographics of the business area within 18 months prior to the disaster or as a result of the disaster which makes it uneconomical to continue the business in the business area;
 - (3) Substantial change in business costs as a result of the disaster which makes the continuation of the business in the business area not economically viable;
 - (4) Location of the business in a hazardous area such as an SFHA or an earthquake prone area;
 - (5) Change in the public infrastructure in the business area within 18 months prior to or as a result of the disaster that would result in substantially increased expenses for the business in the business area;
 - (6) Implementation of decisions adopted and partially implemented within 18 months prior to the disaster to move the business out of the business area for good and sufficient business or personal reasons; or
 - (7) Other factors which undermine the economic viability of the business area.

e. Eligibility Provisions, Amounts, and Limitations.

- (1) Mandatory Relocation. When relocation is mandatory, we consider the real property a total loss, regardless of the actual extent of physical damage.

Mandatory relocation provisions do not apply to tenants and renters, except in cases of leasehold or similar improvements (e.g., owned manufactured housing on leased land).

- (a) The victim may relocate anywhere in the United States (including its territories and possessions and Puerto Rico). No reasons need be cited; however, we must have documentation that prohibits repair/replacement at the damaged site.
- (b) The victim may not relocate to an SFHA if the damaged site was in an SFHA and sustained substantial damage as defined by NFIP.
- (c) The amount of eligibility for the damaged real property and improvements is the replacement cost of the damaged property subject to these provisions:
- (i) The victim may choose to move the damaged structure to the relocation site and repair the structure, provided the loan does not exceed the cost to build a comparable replacement structure at the relocation site;
- (ii) The victim may choose to purchase a replacement structure, provided that it is equivalent and the loan is not used for upgrading;
- (iii) If the damaged property is a rental or investment property which has an unusually low predisaster FMV because of its physical condition (e.g., deferred maintenance), location, or similar market reasons, the cost to replace the structure cannot exceed its predisaster FMV (see subparagraph 22.e.);
- (iv) If the damaged property is a condominium where the homeowners association has voted not to rebuild, the amount of eligibility for the damaged real property and improvements is not limited to just the market value or replacement value of the condominium itself but must also include the unit owner's proportionate share of the condominium association's common assets, such as buildings, amenities, etc.;
- (v) Additional costs to meet building codes at the relocation site are eligible;
- (vi) The victim is also eligible for reasonable moving and storage costs. The limit for moving expense for contents of the damaged structure is \$3,000 for home loan borrowers and \$5,000 for business loan borrowers. Allowances above these amounts must be substantiated and documented; and
- (vii) Disaster mitigation assistance is not eligible.

- (2) Involuntary Relocation. When relocation is involuntary, there is no affect on disaster loan eligibility based upon where the victim elects to relocate. Other limitations apply, as follows.
- (a) The victim may relocate anywhere in the United States, including its territories, possessions, and Puerto Rico. Involuntary relocation provisions also apply to tenants and renters.
 - (b) The amount of loan eligibility is subject to these provisions:
 - (i) The physical loss eligibility for RE is limited to the cost of repairing the damage to the real property at the disaster site;
 - (ii) The physical loss eligibility for tenants with eligible LHI is limited to the cost of repairing the LHI at the disaster damaged site;
 - (iii) Any code compliance costs which would have been required to repair or rebuild at the damaged property site are not "transportable" to the relocation site;
 - (iv) Any costs of required code compliance at the relocation site may be eligible as an alternate use of proceeds;
 - (v) Disaster mitigation assistance is not eligible; and
 - (vi) Moving expenses are not eligible as part of a physical loss loan.
- (3) Voluntary Relocation Within the Business Area. The amount of loan eligibility is subject to the same restrictions as involuntary relocations.
- f. The Relocation Plan. If you recommend approval for relocation, the case file must state how the applicant plans to replace the damaged property.
- (1) A relocation plan should address at least the following:
 - (a) A detailed explanation of why the applicant either desires to or must relocate;
 - (b) If the relocation property is known, a copy of the purchase contract, agreement for sale, etc., and a complete legal description;
 - (c) A complete cost breakdown and financing proposal for the property to be purchased, built, or leased;
 - (d) If the relocation property is unknown (not selected), details of the applicant's intentions as to what type of property they will be looking for, and where;
 - (e) What plans, if any, the applicant has for the disaster damaged property;
 - (f) How the applicant will handle any remaining financial obligations on the damaged property; and

- (g) A flood zone determination on the relocation property.
- (2) Business relocation plans should also address:
 - (a) If the applicant has adequate funds to sustain the business and its owners until relocation property is selected, built, or leased;
 - (b) If the applicant performed adequate market research on the prospective business to be purchased; and
 - (c) If business operations are changing, whether the owner has the necessary managerial ability and industry knowledge.
- (3) In addition to the requirements stated above, if the applicant is a unit owner in an association that has voted not to rebuild, they will need to submit the following:
 - (a) A complete copy of the Association's CC&R's.
 - (b) A copy of the Association's Master Insurance Policy.
 - (c) A copy of the documentation from the Association stating they will not rebuild and identifying the applicant's/borrower's proportionate share of the total common area.
 - (d) If available, documentation stating the predisaster value of the land improvements for the Association's common areas.
- (4) If the applicant is uncertain about relocation (other than mandatory situations), you must process the application under the assumption the applicant will repair the damaged property.
- (5) When you discuss relocations, you should strongly urge applicants to make any purchase agreement, contract for sale, or new lease subject to written SBA approval.
- g. Refinancing. Authorized refinancing may be available to victims who relocate.
- h. Collateral Requirements and Disaster Damaged Property. The damaged property from which the victim is relocating may have significant value.
 - (1) Collateral Requirements. Generally, we require both the damaged property and the relocation property as collateral. If the damaged property has outstanding liens, we will permit the lien holder to file a lien in the same amount on the relocation property, provided they release their lien on the damaged property. In these cases we will take a subordinate lien on the relocation property and a first lien on the damaged property. Otherwise, we will take a first lien on the relocation property and a junior lien on the damaged property.
 - NOTE:** For loans of \$50,001 - \$250,000, we will not require a title search on the disaster damaged property when the loan officer determines that the relocation property is sufficient to fully secure the loan.

- (2) Disaster Damaged Property. We have an interest in the damaged property because the property may have value as a source of additional funds for the victim to recover financially from the disaster, and the damaged property may be ineligible for future disaster assistance.
- (a) If you determine the proceeds from the sale of the damaged property are necessary to reduce the loan amount (for the purpose of lowering the installment payment to a level which the borrower can better afford), sale of the damaged property becomes advisable.
 - (b) Collateral should have "due on sale" clauses. However, when the damaged property is not taken as collateral, the LAA must include the stipulation requiring that the borrower make their best efforts to sell the damaged property within two years from date of note and submit the net proceeds to SBA (to be applied in inverse order of maturity (IOM) to the outstanding loan balance). This is required unless the borrower demonstrates that doing so would constitute an undue hardship. If not sold within the prescribed two year period, the requirement to apply the net proceeds to SBA remains in effect.
 - (c) Relocation may make the damaged property ineligible for any future disaster loan assistance. For example, a damaged property located in an SFHA from which the victim relocates is ineligible for future assistance when:
 - (i) The relocation was mandatory; or
 - (ii) The property is located in a Community Under Sanction or in a Nonparticipating Community.
 - (d) When we determine property to be ineligible for any future assistance, the LAA must include a stipulation (OC-04) requiring the borrower to place on the title a notice that the property is ineligible for any future disaster loan assistance for damage caused by any type of disaster.

38. UPGRADING

Physical disaster loans provide funds for the repair or replacement of disaster damage to property. The objective is to restore the property to its predisaster condition.

- a. General Rule. Any improvement beyond predisaster condition is upgrading, and is not eligible. However, certain exceptions are authorized **on a case-by-case basis.**
- b. Distinguishing Upgrading from Acceptable Replacement Choices. Similar replacement satisfies the basic objective without raising concerns of upgrading or alternate uses of eligibility. Borrowers can exercise a reasonable degree of discretion in choosing how to replace the damaged or destroyed property. Upgrading usually creates a need for funds in addition to the eligible amount, or involves using excessive amounts to improve one thing by foregoing necessary repairs to another. Trade-offs of size and quality within the approved loan amount are permissible.

- c. Applicant Funded Upgrades. An applicant may make upgrades using his/her own resources or borrowed funds. When an applicant proposes to use other resources, you must ensure that:
 - (1) The applicant has the ability to repay the disaster loan and any other debt; and
 - (2) SBA's credit position is not jeopardized.
- d. Building Codes. All property repaired or acquired with disaster loan proceeds must meet applicable building codes in effect at the time the necessary permits are obtained. The cost of making improvements to meet code requirements necessary to obtain a permit or other similar approval to make repairs is eligible. Upgrades necessary to meet building codes are not eligible in cases of voluntary or involuntary relocation.
- e. Minimum Residential Standards. All residential property repaired or acquired with disaster loan proceeds must meet minimum (reasonable) standards of decency, safety, and sanitation. Examples of minimal residential standards include interior sanitation (bath and toilet) facilities, heat, safe wiring, and similar concerns normally covered by codes. Normally, this is addressed by local building and occupancy codes and the costs are eligible. However, if not addressed, these judgments and associated costs are made by the LV.
- f. Protective Devices and Mitigation Measures. In some circumstances, additional protective devices and mitigation measures not in place prior to the disaster are eligible improvements (see paragraph 40).

39. ALTERNATE USE OF LOAN ELIGIBILITY

Generally, borrowers must use their disaster loan eligibility to replace the lost property in like kind. However, in some situations, we can allow the applicant to purchase property different from what was lost. The determining factor is the reasonableness of each request. For example:

- a. A tenant (renter) who suffered a substantial PP loss is forced to vacate his/her primary residence and is unable to locate comparable rental quarters. We can allow them to use disaster loan eligibility to purchase a primary residence, if:
 - (1) The amount of the disaster loan eligibility does not exceed the administrative limit on personal property; and
 - (2) The cost of the residence is no more than its FMV; and
 - (3) Any cost of the residence that exceeds disaster loan eligibility is available from one or both of the following:
 - (a) Injection of funds that do not have to be repaid; and/or
 - (b) A loan from another lender.

- b. Owners of destroyed MH used as their primary residence may be allowed to use their total eligibility to purchase or build a conventional home. Conversely, owners of damaged or destroyed conventional homes used as their primary residence may be allowed to use total eligibility to purchase a MH (not a travel trailer) to be used as a primary residence. However, the cost of the replacement home cannot exceed its appraised value.
- c. Handicapped, disabled, and physically challenged individuals may have special needs which require even more latitude when making alternate use determinations. For example:
 - (1) An applicant is confined to a wheelchair which was damaged or destroyed by the disaster in addition to other personal property items. The wheelchair was an older, manually operated model. In lieu of replacing certain other PP items, we could allow the applicant to purchase a motorized wheelchair as a replacement for the manual model.
 - (2) A member of an applicant's household is confined to a wheelchair. No PP damaged was sustained, only RE damages. In lieu of repairing or replacing some items, we could allow the construction of wheelchair access ramps even if none previously existed.
- d. Upgrades determined to be ineligible under paragraph 38 remain ineligible for an alternate use of proceeds.

40. PROTECTIVE DEVICES AND MITIGATION MEASURES

- a. General Rule. Protective devices or mitigation measures in place before the disaster are eligible. If not in place before the disaster, eligibility is based on the need for adding such a device or measure. Examples of these devices or measures include, but are not limited to:
 - (1) Retaining walls;
 - (2) Fences;
 - (3) Seawalls or bulkheads;
 - (4) Relocating utilities; and
 - (5) Modifying structures.
- b. Pre-existing Protective Devices or Measures. If the devices or measures existed prior to the disaster, the full cost to repair or restore to predisaster condition is eligible, except when the devices or measures were installed outside of a home or other building. In those instances, only the cost of repairing or restoring the device to functional predisaster condition is eligible. (The costs of repairing or restoring any cosmetic or nonfunctional embellishments are subject to the landscaping limits.)
- c. Code Requirements for Protective Devices or Mitigation Measures. If the devices or measures did not exist prior to the disaster, the full cost of a device or measure to meet code requirements is eligible.

- d. Necessity of Protective Devices or Mitigation Measures to Make Disaster Repairs. If the devices or measures did not exist prior to the disaster, but are absolutely necessary to repair or restore the property, the full cost is eligible if:
- (1) It is the only feasible or practical method of repairing or restoring disaster damage to land, land improvements, or structures; and
 - (2) It prevents immediate and continuing danger of serious damages to structures (not land and land improvements); and
 - (3) We receive written evidence from a professional third-party (such as an engineer's report) which clearly establishes the necessity for the device or measure (opinions from real estate agents, insurance adjusters and the like should not be considered); and
 - (4) You document the necessity in the case file.
- e. Post Disaster Mitigation Measures. The statute provides eligibility for the costs of these devices or measures subject to the following:
- (1) Mitigation eligibility depends on there being RE or LHI damage. If there is only PP damage, there is no mitigation eligibility. Measures designed only to protect PP are not eligible. Eligibility is exclusive to the damaged property and does not transfer if the applicant relocates.
 - (2) The maximum eligible cost is 20 percent of the loan amount, calculated before the increase for the cost of the protective device or mitigation measure. For this calculation, the loan amount is the amount loaned for physical damage.
 - (a) This additional mitigation amount up to 20 percent is not subject to the \$200,000 administrative limit for real property damage for home loans. The 20 percent is based on the full amount of the loan for both RE and PP. Thus, the maximum possible amount of a disaster home loan is \$488,000 (\$200,000 for RE damage, \$40,000 for PP damage, \$48,000 for mitigation, and \$200,000 for refinancing).
 - (b) For business loans, the 20 percent is subject to the \$1,500,000 legislative limit.
 - (c) For refinancing purposes, you do not include the additional amount in calculating substantial damage or when determining the eligible refinancing amount.
 - (d) You may include code required upgrades which could also qualify as mitigation and which cannot be funded due to the administrative limit under mitigation eligibility.
 - (3) The proposed device or measure must protect or mitigate against damage from the same type of occurrence as the declared disaster (e.g., protection against future flood damage when the disaster was a flood).

- (4) The applicant must choose the protective device or mitigation measure. You must not recommend any specific mitigation measure or comment on the relative merits of one measure as compared to another. The LV must evaluate each request for need or appropriateness before you can take action.
- (5) During loan processing you must:
 - (a) Not include the additional mitigation amount in the credit elsewhere determination (because these costs are voluntary);
 - (b) Address in the case file how the applicant will fund the difference if the cost of the device or measure exceeds 20 percent of the loan amount; and
 - (c) Include in the LAA a specific use of proceeds stipulation with a description of the authorized mitigation measure.
- (6) Generally, applicants can request funds for mitigation at any time during the filing period, or if a loan is approved, through the time of full disbursement. After full disbursement, we will accept a request for additional funds for mitigation if we determine that the delay resulted from substantial causes essentially beyond the control of the applicant.
- (7) You must base the 20 percent limitation on the net approval amount for physical damage (amount of the original loan approval, plus increases, less decreases, and exclusive of refinancing) at the time of the approval of an additional amount for mitigation. If the amount of the loan for physical damage is subsequently decreased, we do not decrease eligibility for mitigation funds we have already approved. But if the amount of the loan for physical damage is subsequently increased, mitigation eligibility is increased proportionally.
- (8) Alternate use of loan eligibility is permissible to cover mitigation measures. The 20 percent limit applies only to the amount added to the loan amount for physical damage, and not to the alternate use. As with all requests for alternate uses of eligibility, approval is contingent upon our conclusion that sufficient repairs can be made to make the damaged property reasonably usable and safeguard the Agency's collateral. Generally, we accomplish this by disbursing that part of the proceeds to fund the necessary repairs prior to that part to fund the mitigation measure.
- (9) In cases of a condominium or similar association where the damage is to the real property of individual unit owners and to the common property owned by the association, the individual condominium unit owners may assign their mitigation eligibility to the condominium association.
- (10) Tenants who own leasehold improvements are eligible for mitigation. However, a lease requirement to repair the owner's real property does not convey mitigation eligibility to the tenant.

- f. Pre-Disaster Mitigation Loan Program. See appendix 28 for an explanation of program guidelines and procedures.

CHAPTER 5

AMOUNTS, TERMS, AND CONDITIONSOF PHYSICAL DISASTER LOANS41. LIMITS ON LOAN AMOUNTS

There are legislative limits imposed on the disaster loan program (Section 7(c)(6), Small Business Act). These are further restricted administratively in SBA's regulations (13 CFR part 123) and this SOP. The administrative limit applies to the combined total amount of all home loans to any one applicant for any one disaster. Members of a single household (e.g., husband, wife, and dependents) cannot make separate applications for the purpose of exceeding the administrative limit.

a. Administrative Limits on Home Loan Amounts.

- (1) For real estate (RE) damage, the limit is \$200,000. Real Estate damage includes all physical damage to a primary residence and appurtenant structures, landscaping, land and land improvements, relocation costs, and permissible upgrading.
- (2) For personal property (PP) damage, the limit is \$40,000. Personal Property includes all household contents of the primary residence and eligible vehicles.
- (3) For mitigation measures, the limit is 20 percent of the loan amount for physical damage (both RE and PP damage), up to a maximum of \$48,000.
- (4) For refinancing, the limit is \$200,000.
- (5) The maximum amount of a disaster home loan for a SINGLE disaster is \$488,000.

b. Legislative Limit on Business Loan Amount. The maximum amount of any business loan (physical and EIDL) is \$1,500,000. This statutory limit applies to the combined total amount of all loans to any one applicant, including its affiliates, for any one disaster and includes the provision for increasing a loan for hazard mitigation measures. SBA can authorize an exception to this legislative limit if the applicant is a major source of employment (MSE) (see paragraph 42).

c. Disaster Loan Limit for Combined Home and Business Loans. If a business (not an MSE) has eligible losses of \$1,500,000 and its principal owner(s) has home losses, the following limits apply.

- (1) A business organized as a corporation, a subchapter S corporation, a limited liability entity (LLE), a general partnership or a limited partnership, etc., is a separate legal entity and the principal(s) have full home loan eligibility regardless of the amount of the business loan. For example: A corporation has eligible losses of \$1,500,000. The corporation is owned by two individuals, each with a 50 percent interest. Both 50 percent owners are eligible to apply for damages to their respective primary residences up to the maximum administrative home limits.
- (2) A business operated as a sole proprietorship is not a separate legal entity and we must aggregate the losses to the maximum (non-MSE) loan limit for a single disaster of \$1,500,000. However, the home loan cannot exceed the administrative limits. For example: A sole proprietorship has eligible losses of \$1,450,000. The primary residence of the sole proprietor is also damaged. Because the two are not separate legal entities, the combined maximum legislative loan limit for one disaster is \$1,500,000. Therefore, the home loan application could not be approved for more than \$50,000.

NOTE: Eligibility is affected differently when a principal of a business concern also has a schedule C or E business (as reported on their IRS Form 1040) and a home, each damaged by the same disaster. For example: An LLE has eligible losses of \$1,300,000. Member A has eligible home losses of \$240,000. Member B has eligible home losses of \$325,000 (including refinancing) and also has a schedule E rental business with eligible losses of \$100,000. Member A has full eligibility for the losses to the LLE and their home because each is a separate legal entity. Member B's total eligibility for all losses is limited to \$1,500,000 because of the affiliation of the sole proprietorship (rental business). However, if Member B foregoes the eligibility for the schedule E rental business, they retain full eligibility for their home losses, the same as Member A.

42. MAJOR SOURCE OF EMPLOYMENT (MSE) WAIVER OF LENDING LIMIT

The Agency may waive the \$1,500,000 legislative limit if a business is a MSE. This is to minimize unemployment of large numbers of people in a disaster-impacted community.

- a. MSE Eligibility. A business applicant qualifies as an MSE if, at the time the disaster commences, it is a concern which has one or more locations in the disaster area, which locations individually, or in the aggregate:
 - (1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community, no larger than a county; provided that the commuting area does not extend more than 50 miles from such community; or

- (2) Employed 5 percent or more of the work force in an industry within the disaster area and, if the concern is a nonmanufacturing concern, employed no less than 50 employees in the disaster area or, if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or
- (3) Employed no less than 250 employees within the disaster area.

NOTE: You must aggregate employees of concerns sharing common business premises to determine MSE status of a nonprofit applicant owning the premises.

- b. Discretion to Waive Legislative Loan Limit. SBA may waive the \$1,500,000 limit if:
 - (1) The damaged location(s) of the MSE are out of business or in imminent danger of going out of business and the waiver is necessary to permit the location(s) to reopen or stay open in order to avoid substantial unemployment in the disaster area; and
 - (2) The applicant has used all funds from its own resources and all available credit elsewhere to alleviate the physical damage and/or economic injury sustained.
- c. Use of Applicant's and/or Owner's Assets and Credit. SBA will consider a waiver of the legislative limit only to the extent that loan assistance in excess of \$1,500,000 is necessary after the applicant, its affiliates, and its principals use business and personal assets and credit to the greatest extent possible without incurring undue hardship.
- d. Processing Procedure and Approval Authority.
 - (1) The PDC may decline or withdraw applications for more than \$1,500,000 in accordance with normal procedures. The PDC may also determine that an applicant is not an MSE. (A decline for MSE status is subject to normal reconsideration procedures.)
 - (2) If we can approve an application from a credit perspective and justify an MSE waiver the PDC must prepare both recommendations and send the case file to ODA. The CD/PDC's recommendations must include the initial recommendation and concurrence by an approving official with delegated authority in accordance with the rule of two.
 - (3) All approval recommendations must contain the following loan stipulations:
 - (a) Net Earnings Clause;
 - (b) Initial Public Offering (IPO) Clause; and
 - (c) Distribution and Compensation Clause.

NOTE: The exclusion of any of these stipulations requires justification in the case file.

- (4) The AA/DA must take final action on the credit and MSE recommendations.
- e. Applicability of Executive Orders. In certain circumstances, Executive Orders concerning floodplain management and wetlands protection may apply (see paragraph 52).

43. VERIFICATION OF DAMAGE

Applications for physical disaster loan assistance require on-site inspections, which depending on the location of the disaster either within or outside CONUS, are conducted by Loss Verifiers assigned to the FIT (CONUS) or FOC-E/FOC-W Loss Verification Departments (OCONUS). The only exceptions to on-site inspections are Auto-Declines, Pre-LV Declines, and loans to unit owners for condominium association assessments (see subparagraph 24.c.(2)).

- a. Loss Verifiers conducting on-site verifications have specific responsibilities that include, but are not limited to:
 - (1) Determining estimated cost of repair or replacement of real, personal, and business property;
 - (2) Providing information gathered during the on-site inspection to guide you in establishing eligibility within program guidelines;
 - (3) Estimating replacement and predisaster FMV of damaged property.
- b. Loss Verifiers assigned to the Loss Verification Department in either FOC, have these additional responsibilities:
 - (1) Conducting all Preliminary Damage Assessments (PDAs);
 - (2) Conducting on-site reverifications; and
 - (3) Conducting on-site progress inspections both CONUS/OCONUS;
- c. Loss Verifiers assigned to the PDC Loss Verification Department have the following responsibilities:
 - (1) Conducting flood zone determinations for all applications, which includes determining if property is located within the CBRS;
 - (2) Performing reverifications and progress inspections and determining appropriateness of conducting such on-site;
 - (3) Returning original applications to the FIT when appropriate;
 - (4) Evaluating the appropriateness of disaster mitigation requests; and
 - (5) Reviewing predisaster mitigation project cost estimate/contractor's bid, etc. for reasonableness in cost and reasonableness of the measure as it relates to appropriate hazard mitigation.

NOTE: In circumstances where areas are inaccessible and inspections are not deemed feasible within a reasonable time frame, the use of an alternate method of damage verification is essential for the timely delivery of assistance to disaster loan applicants from such areas. Accordingly, Loss Verification should identify any such areas by coordinating with FEMA, State and local officials; and by utilizing data from all available sources such as rapid needs assessments, map overlay, and GIS data, prior to implementation of alternate damage verification procedures.

44. DETERMINATION OF AMOUNT OF PHYSICAL LOAN ELIGIBILITY

Loan officers are responsible for making all eligibility determinations, including ineligible property, and applying program limitations to eligible property.

a. Definitions.

- (1) The SBA verified total loss is the amount reported by the verifier without regard to program limits.
- (2) Uncompensated physical loss is the difference between SBA verified total loss and any deductions (insurance or other recoveries) for duplication of benefits (DOB).
- (3) Eligible physical loss is the difference between the uncompensated physical loss and any amounts in excess of landscaping limits or other program lending limits.

b. Loan Officer Adjustments to the SBA Verified Total Loss.

The loan officer must analyze the verified losses, determine eligibility of all damaged property, apply all restrictions and limitations, and add any associated indirect expenses. The result is the adjusted verified total loss.

- (1) For personal property (home loans), the LV's report provides an amount of eligibility for disaster damage.
- (2) For business contents, the LV's report provides an amount of eligibility for disaster damage. If your financial analysis leads to discrepancies on the LV report, e.g., inventory, then you must consult with the PDC Loss Verification Department.
- (3) For real property (all loans), the LV's report provides an estimate of the cost to repair/replace all disaster damage by category. You must not vary from the report without first consulting with the PDC Loss Verification Department. You must document any adjustment in the case file.
- (4) You are responsible for applying all other restrictions and limitations in determining the amount of physical loss to eligible property.
- (5) You may increase the SBA verified total loss to account for any associated indirect expenses in accordance with the provisions of subparagraph 22.b.(2).

c. Deductions from the SBA Verified Total Loss.

By statute, eligibility for SBA disaster loans is limited to underinsured or uncompensated losses. You must deduct insurance or any other compensation received or anticipated (from any source) for damage to eligible property to determine the amount of uncompensated physical loss. You do not deduct any insurance or other compensation received for purposes other than loss or damage to eligible property. (This unduplicated compensation is available to the applicant to apply toward repair of ineligible property or other purposes.) Deductions from the SBA verified total loss can originate from:

(1) Other Disaster Relief Organizations.

(a) American Red Cross (ARC) Grants. ARC disaster emergency assistance is usually in the form of vouchers for food, shelter, clothing, clean-up kits, etc. We do not consider this type of assistance a duplication of benefits (DOB) and you do not deduct it from the verified losses. However, if the ARC provides assistance for permanent repairs, you must deduct this assistance rather than require repayment to ARC.

(b) FEMA Public Assistance (PA). Private Nonprofit (PNP) organizations may receive grant assistance for emergency protective measures prior to applying for a loan from SBA for their disaster-related damages. This emergency grant assistance may duplicate the loss SBA verified (e.g., debris removal). We must perform a duplication of benefits (DOB) check on all PNP applications. If the applicant did receive grant monies for emergency protective measures that duplicate our verified loss, the loan officer should decrease the eligible loss amount to correspond with the DOB.

(c) FEMA Individual Assistance (IA).

Assistance to Individuals and Households Program (IHP). IHP assistance may not duplicate SBA disaster loan assistance. There are two types of IHP assistance.

(i) Housing Assistance (HA) – includes disaster-related housing assistance for Individuals and Households displaced from their predisaster primary residences, and/or whose predisaster residences are rendered uninhabitable; who are underinsured, or have no insurance to provide their housing needs.

a. Temporary Housing – Rental assistance and emergency living expenses (ELE) provided to displaced disaster victims. You do not deduct FEMA funds allocated for these purposes from SBA's verified total loss.

- b. Repairs – funds provided for minimal repairs to make a residence habitable. You must deduct any amount if it exceeds \$100.
 - c. Replacement – financial assistance for the replacement of owner-occupied residences. You must deduct any amount if it exceeds \$100.
 - d. Permanent Housing Construction – assistance to individuals in insular areas and remote locations. You do not deduct FEMA funds allocated for these purposes from SBA's verified total loss.
- (ii) Other Needs Assistance (ONA) – (also known as Other Assistance - OA) - financial assistance to individuals and households who have no applicable insurance and (when appropriate) have been denied by SBA, for disaster-related expenses and serious needs. We do not deduct ONA assistance from the SBA verified losses during processing.
- a. Medical, Dental, & Funeral Expenses are not a DOB.
 - b. Personal Property, Transportation, and Other Expenses –
 - (1) Repair/replacement of personal property and vehicle(s) is a DOB.
 - (2) Depending on the circumstances “Other Expenses” may or may not be considered a DOB.
- (iii) If you recommend approval, including limited approval, you eliminate the duplicated benefit by using loan proceeds to repay the grant program in the amount of the duplicated assistance. The LAA must include a use of proceeds requiring reimbursement to IHP in the form of a co-payable check.

NOTE: You must never use RE loan proceeds to repay an IHP award for personal property losses.

- (iv) An IHP award may exceed SBA's verified loss of personal property. In this situation, the maximum DOB for SBA is the amount of verified personal property loss. For example, the IHP award for personal property is \$7,500 and SBA verifies personal property damages as a result of the disaster at \$6,900. In this scenario, the maximum DOB for personal property losses would be \$6,900; \$6,900 would also be the amount of the loan proceeds that would be repaid to FEMA.

- (v) There may be circumstances when the applicant has received the maximum total grant award from FEMA and continues to have unmet disaster-related medical personal property needs. In this limited circumstance, the disaster victim may have eligibility. To determine the eligible loss amount you need to deduct FEMA's medical personal property grant from the amount needed to repair or replace the disaster-related items. Remember, in order to find any eligibility for medical personal property, the applicant must have already received the maximum amount of total grant assistance from FEMA.
- (2) Net insurance proceeds are funds available to the applicant for repair/replacement of disaster damaged property and must be deducted from the SBA verified total loss.
- (a) Exclusions from Net Insurance.
- (i) Insurance may be for damage to both eligible and ineligible property, without specific policy provisions. If breakdowns are not provided, you must apply the insurance recovery first to ineligible property and then to eligible property.
- (ii) If the holder of a lien on real property and/or business M&E has legal control of the insurance proceeds and requires that the proceeds be applied to reduce the lien balance, you do not deduct that amount. The reason the lender required the funds does not matter, only that they had the legal right to do so and did. You must obtain substantiating evidence either in writing from the lien holder or from a documented telephone conversation. Contacting the lender by telephone and verifying that the lender **required** the insurance proceeds be applied to the lien is not only acceptable but is preferable from both a loan processing and customer service perspective. However, the loan officer must state in the chron log that the lender mandated or required the pay down or payoff of the existing lien(s).
- NOTE: You must deduct the insurance if an applicant elects to apply insurance proceeds for the reduction of an existing lien, or if the applicant requested the lender to demand payment.
- (b) Personally Owned Vehicles. You must deduct from the verified loss to a personally owned vehicle the insurance proceeds voluntarily or involuntarily used to reduce or pay off a lien on the vehicle.

- (3) Other Recoveries and Deductions. You must also deduct any other recoveries or compensation which would duplicate an SBA loan for physical repairs.
- (a) Free Labor and Materials. You must deduct the dollar equivalent of free labor provided by the applicant, relatives, friends or **charitable** third parties to restore disaster damage, and the cost of any materials donated to the applicant for use in the restoration.
- NOTE:** If a relative or friend is an established professional in the applicable field and the repairs are performed as a third party transaction, labor costs may be eligible. Inclusion of these costs must be approved by the Supervisory Loss Verifier.
- (b) Overhead and Profit. You must deduct the amount of overhead and profit included in the LV's estimate if the applicant business or an affiliated business is used to repair disaster damage. (The LAA contains a standard paragraph which prohibits borrowers from paying overhead or profit for repairs performed by, or for materials acquired from, a business in which the borrower owns a 50 percent or greater interest.)
- (c) You must deduct third party payments/adjudicated settlements when liability is acknowledged by another or legal proceedings determine compensation has been made or accepted.
- (d) Miscellaneous Recoveries. You must deduct grants or gifts, typically from State or local governments and volunteer agencies, including ARC, **Community Development Block Grants (CDBG)**, Salvation Army, Catholic Charities, Mennonite Disaster Services, and similar organizations.
- (e) Government Sponsored Buyouts. You must deduct the purchase price if FEMA or any other agency buys the damaged property. You do not deduct moving expenses associated with the purchase.
- d. Assignments of Pending or Future Insurance Recoveries.
- (1) If you know the amount of an insurance settlement at the time of loan processing, you deduct it from the SBA verified total loss.
- (2) If you do not know the full amount of an insurance settlement at the time of processing, you only deduct the known amount. This arises when an insurance claim for disaster damage:
- (a) Has not yet been processed or settled;
- (b) Has been only partially processed or settled; or
- (c) Is in dispute, or when an applicant claims that additional insurance coverage may be due.
- (3) You must include an appropriate stipulation in the LAA providing for an assignment of any pending insurance settlement as follows:
- (a) If additional amounts are expected, use the appropriate LAA stipulation to take an assignment of any insurance proceeds in excess of the amount deducted.

- (b) If no insurance is deducted but some is expected, use the appropriate LAA stipulation to take an assignment of any insurance proceeds.
- e. Determining the Final Eligible Loan Amount. After you make all required deductions from the SBA verified total loss in accordance with subparagraphs c. and d. above, you have determined the uncompensated physical loss. You must now make the following adjustments to determine the eligible physical loss:
- (1) Apply the landscaping limits;
 - (2) Apply the legislative or administrative limits;
 - (3) Add any eligible amount for necessary and appropriate additional protective devices or mitigation measures within the legislative limit; and
 - (4) Add any amount of authorized refinancing.
- f. Lending for the Insurance Deductible Only. The provisions of this paragraph apply to any disaster whenever the applicant seeks a loan solely for the insurance deductible. Lending for the deductible avoids many time consuming tasks without significantly increasing the risk of DOB.
- (1) When the estimate of damage from the insurance company is unknown, we will lend the lesser of the insurance deductible or the eligible physical loss based on SBA's loss verification.
 - (2) When the estimate of damage from the insurance company is known and exceeds SBA's damage verification, we will accept the insurance company's estimate of damage **and, after review by PDC Loss Verification,** increase the eligible loan amount as appropriate, up to the amount of the deductible.
 - (3) Processing Procedure.
 - (a) You must verify the amount of the deductible, either by phone with the insurance company or agent, or by requesting a faxed copy of the declarations page of the policy from the applicant. If all attempts fail, you may accept the applicant's statement as to the amount of the deductible and process the loan accordingly. In these cases, you must include the following requirement **as customized text** in the conditional commitment letter (CCL): "A copy of the declarations page of the insurance policy or other evidence, satisfactory to SBA, of the amount of the insurance deductible."
 - (b) You do not take assignments of insurance when the loan is for the deductible only.

NOTE: If the applicant desires to borrow more than the deductible, the above procedures do not apply and you must perform the standard eligibility calculations.

45. ROUNDING OF DOLLAR AMOUNTS

Because the Agency's loan accounting system accommodates loan amounts in even hundreds, dollar amounts of all disaster loans must be rounded to the next higher whole hundred when determining the actual loan amount. The final loan amount is rounded only once. You then allocate the use of proceeds accordingly (RE, PP, M&E, inventory, etc.).

46. INTEREST RATES

Each disaster declaration specifies the interest rates applicable to the categories for all loans processed under that disaster declaration, except as provided for in subparagraph c. below.

- a. Home Loans. The Small Business Act contains a formula for setting two interest rates for home loans, based on the availability of credit elsewhere. The below market rate applies to homeowners with no credit available elsewhere (NCE), and the market rate applies to homeowners with credit available elsewhere (CE). The method for determining home loan credit elsewhere is in appendix 24.
- b. Business Loans. Similarly, the statute contains another formula for setting two interest rates for business loans, based on the availability of credit elsewhere. The below market rate applies to businesses with no credit available elsewhere (NCE), and the market rate applies to businesses with credit available elsewhere (CE). The method of determining business loan credit elsewhere is in appendix 25.
- c. Nonprofit Organization Loans. The statute contains another formula for setting two interest rates for nonprofit, eleemosynary, cooperative, religious, and similar organizations and institutions, depending upon the availability of credit elsewhere. In these cases, use the business credit elsewhere test (CET) (see appendix 25). For nonprofit and other organizations without credit available elsewhere, the interest rate is the same as for businesses without credit available elsewhere. For nonprofit and other organizations with credit available elsewhere, we base the interest rate on a different statutory formula. ODA provides this rate at the beginning of each fiscal year. This rate applies to all credit elsewhere nonprofit loans at the time of approval if it is lower than the credit elsewhere rate stated in the declaration or designation. Otherwise, the credit elsewhere rate announced in the declaration or designation applies.
- d. Economic Injury Loans.
 - (1) By statute, we can authorize EIDLs only at the business NCE interest rate.
 - (2) The interest rate to be assigned to MREIDL approvals changes quarterly. However, once the appropriate interest rate is assigned to an approved MREIDL loan, it remains fixed. The proper interest rate to be applied to any MREIDL loan approval is SBA's published EIDL interest rate at the time the MREIDL case file is APPROVED. For MREIDL only, the date of approval is the date the appropriate approving official concurs with the processing loan officer's recommendation.

47. LOAN TERMS AND INSTALLMENT PAYMENT AMOUNTS

- a. General Principle. You determine the installment payment amount based upon the applicant's ability to repay. First you establish the installment payment amount and then you set the term in accordance with that amount.
- b. Maximum Term.
 - (1) The maximum term of disaster loans is 30 years.
 - (2) For businesses able to obtain credit elsewhere, the maximum term is 3 years.
 - (3) For nonprofit, eleemosynary, religious, cooperative, and similar institutions able to obtain credit elsewhere, the maximum term is 30 years.
- c. Establishing the Term.
 - (1) You are responsible for an independent evaluation of the applicant's ability to repay. You should not base payment amounts and terms solely on an applicant's request.
 - (2) For home loans, the Fixed Debt Method (FDM) described in appendix 26 and the calculations described in subparagraph 47.j. below provide the method for analyzing and justifying payment amounts and terms.
 - (3) For business loans, you base the loan term on the target payment (see subparagraph 47.j.(3)).
- d. Equal Installment Payments. Normally, disaster loans are repaid in equal monthly installment payments of principal and interest which fully amortize the loan amount and the interest accrued during the initial deferment period within the loan term (see subparagraph g. below).
- e. Exceptions to Equal Installment Payments.
 - (1) Occasionally, it may be appropriate to approve a loan with reduced initial installment payments and larger installment payments thereafter.
 - (a) This usually occurs when an applicant will pay off a significant fixed debt within the first two years of the loan, and that debt is unlikely to recur, such as a mortgage or a one time loan.
 - (b) You must justify recommendations for reduced initial payments in the case file, subject to the following:
 - (i) You must restrict the initial installment payment amount to not more than two years, after which the full (permanent) installment payment amount is required;
 - (ii) We can permit only two payment amounts (initial and permanent). This restriction does not govern changes which may become necessary during the closing, disbursing, and servicing processes; and

- (iii) Generally, the initial payment amount should at least cover accruing interest. This avoids an accrual of deferred interest requiring an unreasonably large permanent payment amount to amortize within the term.
- (2) Balloon payments are prohibited.
- f. Frequency of Installment Payments. You must justify any exception to monthly payments in the case file. However, when an applicant receives income on a seasonal or annual basis, you may arrange the repayment schedule to provide for quarterly, semi-annual, or annual payments.
- g. First Payment Due Date.
 - (1) The first payment due date is 5 months from the date of the Note. This reflects a standard deferment of 4 months. It recognizes that disbursements are seldom completed on the Note date, and that disaster recovery is seldom accomplished immediately upon obligating.
 - (2) In some instances you may need to defer the first payment due date longer than 5 months from the date of the Note. For example, when the construction/major repair will take a protracted period, the borrower may be unable to make full payments until the project is substantially completed. In these cases, you may set the first payment due date more than 5 months from the date of the Note if you justify the need in the case file. Use this provision with caution and only to address clear needs. You should be aware that the interest accrual during these deferment periods can be significant, and may result in substantially higher installment payments to amortize the loan within the term. Approval authority for these deferments is limited as follows:
 - (a) First payments due up to and including 1 year from the date of the Note require SLO approval;
 - (b) First payments due more than 1 year and up to and including 18 months from the date of the Note require ADLP or designee approval; and
 - (c) First payments due more than 18 months and up to and including 2 years from the date of the Note require the CD/PDC's recommendation. Only the AA/DA may approve these requests. This restriction is not intended to govern unforeseeable situations where the initial disbursement is delayed beyond 18 months. It does govern situations where there has been at least one disbursement.

NOTE: When reinstating a cancelled loan the new loan closing documents will reflect the initial deferment of the first payment due date as reflected in the original loan closing documents.

- h. Payments are Fixed Amounts in Whole Dollars.
- (1) You must express all installment payments as a fixed number of dollars, rather than "principal and interest" or "interest only" or other descriptions.
 - (2) You must round all installment payments up to the next whole dollar to accommodate automated collection facilities.
- i. Terms in Whole Months or Years. You must write initial loan terms in whole months or years. You round up to the next month or year as follows:
- (1) Write loan terms of less than 1 year, in whole months (e.g., 9 months);
 - (2) Write loan terms of less than 3 years in years and whole months (e.g., 2 years 7 months);
 - (3) Write loan terms of 3 years or more in whole years; and
 - (4) If you modify a loan, the resulting term will not usually be a whole year. In these cases, you write the modified term for the next higher whole month, even if the loan term is 3 years or longer.
- j. Calculating Payment Amounts and Loan Maturities.
- (1) Accrued Interest. You must account for the interest accrued during the initial deferment period when you set the loan term. Every loan has at least a 4 month deferment. However, most loan amortization computer programs and electronic calculators assume that the first payment is due at the end of the first month. Remember to adjust for the deferment period.
 - (2) Home Loans. To ensure consistency and simplicity, you must calculate the installment payment amounts and loan terms as follows (for business loans, see subparagraph 47.j.(3) below).
 - (a) You calculate the interest accrued in the deferment period as if the loan were fully disbursed at the signing of the Note. Multiply the loan approval amount by the interest rate, divide by 12 (to obtain the monthly interest accrual), multiply by the number of months for which interest has been deferred in excess of 1 month (4 months if the standard deferment setting the first payment 5 months from the date of the Note is used), and add the result to the loan approval amount. This sum is the dollar amount used to calculate the loan term.
 - (b) Calculate the number of months it would take to pay off the dollar amount resulting from the calculations in (a) above by amortizing this amount using the target payment (1/3 CA).
 - (c) Add the number of months, in excess of 1, during which interest will accrue before the first payment due date (4 months if the standard deferment setting the first payment 5 months from the date of the Note is used) to the number of months resulting from the calculation in (b) above.

- (i) If the result is less than 36 months, round to the next higher whole month. This is the final loan term. It will be expressed in years and months (e.g., 27 months is 2 years and 3 months).
- (ii) If the result is 36 or more months, convert the term to years by dividing the total number of months by 12, and round up to the next higher whole year. If this result is 30 years or less, this is the final loan term.
- (iii) In (i) or (ii) above, when the term is rounded up to the next higher whole month or year, the installment payment amount will not exactly correspond to the final loan term. Recalculate the exact payment amount required for the final loan term and round the payment up to the next higher whole dollar amount.

NOTE: This amount should not be larger than the payment used for the calculations before rounding up the term.

- (iv) If the result of your calculation in subparagraph (c) is more than 360 months (30 years), recalculate the amortization with the loan approval amount from (a) above and use 356 months (the maximum number of monthly payments on a 30-year loan with the standard deferment) to determine the necessary monthly payment. If this payment amount is within the range from 1/3 to 100 percent of cash available (CA), generally you write the loan with the maximum 30-year term and this payment amount (see appendix 26, subparagraph 3.h.2., for exceptions to this general rule). If the payment exceeds 100 percent of CA, consider the options set forth in appendix 26. The payment amount must never exceed CA. Round the payment up to the next higher whole dollar amount.
- (v) You must justify the payment if you exceeded the standard MAFD% or the monthly payment is less than 1/3 CA.

(3) Business Loans. For business loans, determine a reasonable amount for the borrower to pay for each monthly (or other) installment. Generally, you should base the target payment at 1/3 of TOTAL CASAD (cash available to service additional debt). You must justify the payment if you use an amount other than the target payment.

(4) The above calculations are made only for administrative convenience to determine the payment amount. If a borrower questions the methodology, you should emphasize that the promissory Note specifies that payments will first be applied to the interest accrued before any portion of payments will be applied to principal. The loan is a simple interest loan, and the SBA loan accounting system does not charge interest on interest.

- k. Special Provisions Applicable to Private Colleges and Universities. The Small Business Act provides authority to waive interest for the first three years and to defer principal payments for the first three years of the term of a disaster loan to a private college or university in Presidential declarations. Only the AA/DA can approve these deferments.
48. COLLATERAL REQUIREMENTS
- a. General Policy. The law does not require collateral on disaster loans. However, SBA policy establishes collateral requirements based on a balance between protection of the Agency's interest as a creditor and as a provider of disaster assistance.
- b. Unsecured Loan Limit.
- (1) The Limit for Unsecured Physical Disaster Loans (Home and Business) is \$10,000. The law (Section 7(c)(6), Small Business Act) prohibits requiring collateral on physical disaster loans of \$10,000 or less at the time of approval. However, we can accept security when the applicant voluntarily offers collateral on physical disaster loans of \$10,000 or less. For example, an applicant may wish to take advantage of the mortgage interest deduction for tax purposes, and may freely offer the property as security. In these cases we would accept security for the loan which would otherwise be unsecured. Never suggest collateralizing an otherwise unsecured loan with an applicant. You must always document the applicant's unsolicited offer.
- (2) When making multiple disaster loans to the same borrower (or affiliated group), apply the following guidelines.
- (a) You must separately aggregate the amount of all physical loans from all economic injury disaster loans to the same borrower (and its affiliates) from the same disaster declaration (e.g., home loan and business loan, or two loans to two affiliated businesses). If the aggregate amount of the physical loans is more than \$10,000, each of the loans must be secured. If the aggregate amount of the EIDLs is more than \$5,000, each of the loans must be secured. If the aggregate amount of the physical loans is \$10,000 or less or the EIDLs is \$5,000 or less, you cannot require collateral.
- NOTE:** You do not aggregate the amounts of the physical loan(s) and EIDL loan(s) to determine if collateral is required.
- (b) You must aggregate disaster loans from the same disaster event in multiple jurisdictions (e.g., states) even if we issue a separate disaster declaration in each jurisdiction.
- (c) Do not aggregate disaster loans with outstanding loans to the same borrower (and affiliates) from prior disasters.

- (d) The rule about not combining borrowers in subparagraph 41.c. for purposes of applying loan eligibility limits does not apply to collateral considerations, which are a credit matter.
- c. Secured Loan Limit. All loans exceeding the unsecured loan limit require collateral. Real estate is the preferred form of collateral.
- (1) Determine what collateral is available, and take that collateral which will best secure each loan. When an applicant offers certain collateral, try to honor the applicant's preferences, but only to the extent that doing so will secure the loan at least as well as taking other available collateral not offered. Where a conflict exists between the collateral available and offered, our determination is final.
 - (2) We will not decline an application if the available collateral does not adequately secure the full loan amount. However, an applicant's refusal to pledge available collateral is grounds for declining a loan application or canceling an approved loan.
 - (3) Generally, collateral is adequate if the equity is at least 100 percent of the loan amount. Equity is determined as follows.
 - (a) The LV assigns a predisaster FMV to the **damaged** collateral. If appropriate, the collateral may be appraised at "liquidating" or "distress sale" value.
 - (b) From this value, you deduct the current balance owing on all liens associated with the collateral property from that value.
 - (c) Then compare the equity (difference) to the loan amount for coverage purposes.
 - (d) If the applicant disagrees with our collateral property estimate and equity determination, they may submit written independent evidence for re-evaluation.
 - (4) Generally, we will not require an applicant to pledge more collateral than is necessary to adequately secure a loan. However, you must take additional collateral if:
 - (a) The applicant's credit (repayment and/or credit history) is marginal; and
 - (b) The proposed collateral does not provide 100 percent coverage.
 - (5) Consistent with the above criteria, we would take the damaged or replacement property for collateral. However, to avoid unnecessary paperwork or excessive collateral, it may be appropriate to do otherwise. For example, if an applicant owns two real estate parcels, one damaged and one not damaged, where the equity in the damaged property is insufficient to secure the loan but the equity in the other (non-damaged)

property is sufficient, we prefer to fully secure the loan with a lien on the non-damaged property and avoid taking another lien on the damaged property. Otherwise, the usual practice is to require a lien on the damaged property, and because that is insufficient to secure the loan, to require another lien on the non-damaged property. For insurance requirements, see paragraph 50.

- (6) The Loan Officer assigns a FMV to the non-damaged replacement collateral property based upon information from various sources. The equity in the non-damaged property is determined by following the steps in subparagraph 48.c.(3) above.
- d. Special Provisions for Secured Home Loans. Real estate [including manufactured housing (MH)] is always the preferred form of collateral to secure a home loan, even if the equity in the RE or MH is insufficient to secure the full loan amount. Take personal property as collateral only if the applicant owns no real property and if the PP is valuable or unique, such as boats, RVs, etc. When we do secure a home loan with PP, we will not require a specific lien position, but will accept the best valid lien position available.
- If the applicant is self-employed, you must also take tangible business assets to the degree necessary to make up the lack of equity in the real estate.
- e. Special Provisions for Secured Business and EIDL Loans. Real estate is always the preferred form of collateral to secure business and EIDL loans. If RE is unavailable or inadequate, other fixed assets, such as M&E, are usually preferred to inventory or accounts receivable as collateral. If there is not any RE damage but real property is available as collateral, we will require a lien on that property. An applicant's refusal to pledge available preferred collateral (e.g., RE) is a basis for declining an application or canceling a loan even if other nonpreferred collateral property may be sufficient to secure the loan.
- f. Special Provision for Collateral from Business Tenants. If the existing lease (including renewal options) is shorter than the recommended loan term, the existing lease should be extended to "cover" the loan term, and assigned to SBA with right of reassignment. If the applicant prefers, other collateral acceptable to SBA may be substituted and we can waive extension and assignment of the lease. If it is not possible or desirable to modify the term of the lease, document the likelihood of the business continuing at the same or different location, and how this affects repayment ability.
- g. Special Provisions for Secured Loans to Associations. Certain special collateral requirements apply to associations. Generally, our basic approach is the following.
- (1) Require a special assessment, approved by the general membership, with a binding assignment thereof. (The association's general membership shall pass a special assessment according to its governing documents.) The Legal Department will prepare the assessment as follows.

- (a) It will be in an amount sufficient to fully amortize this loan in accordance with the payment terms as stated in the LAA.

NOTE: The LAA includes the following stipulation to address instances where the borrower has included additional principal with their monthly payment:

PH-01: In the event Borrower includes additional principal (e.g., a unit owner's full assessment amount) with a monthly payment, SBA will, at the Borrower's request, modify the loan payment amount for future payment to reflect the remaining principal balance and the remaining term of the loan.

- (b) It will refer to and adopt all of the terms and conditions of the LAA, and provide that the proceeds of the special assessment will be used solely to amortize the loan.
- (c) It will be irrevocable until the SBA loan is paid in full.
- (d) It will require the association to assign the proceeds of the assessment to SBA as collateral for the loan.
- (2) Require a mortgage or deed of trust on the common areas owned by the association, where permitted by law.
- h. Prior Liens and Other Creditors. Applicants often have prior liens on the collateral property. We should make the most favorable arrangement possible with other creditors and prior lien holders. Banks and other creditors are frequently unwilling or legally prohibited from subordinating their liens to a disaster loan. With respect to prior lien holders you should consider the following.
- (1) All LAAs for secured loans include a standard stipulation by which borrowers agree to neither seek nor accept future advances under any superior lien on the collateral without the prior written permission of SBA. Sometimes, stronger requirements may be appropriate, such as obtaining, prior to disbursement in excess of the secured threshold, the prior lien holder's agreement to close the open-end advance clause or agreement not to advance any additional funds under a superior lien. This is especially important when the collateral secures an open line of credit. You should use LAA stipulation RC-01 in these cases. You must justify any unusual needs in the case file, and incorporate the appropriate custom stipulation in the LAA.

- (2) If the collateral is located in a "non-notice" state (consult with Center Counsel), we will send a letter to the senior lien holder(s) requesting advance notice of any foreclosure actions against the borrower. Prior to disbursement in excess of the secured threshold, it may be appropriate to obtain a specific agreement by the prior lien holder to provide this notice in advance of foreclosure. You must justify unusual need in the case file, and incorporate the appropriate stipulation in the LAA after consulting with Center Counsel.
- i. Comparative Value of Liens. If the applicant elects not to directly repair or replace the disaster damaged property, you must consider the comparative value of liens. As a general rule, if we accommodate the applicant (such as involuntary or voluntary relocation, applicant-funded improvements, alternate use of eligibility, etc.) our lien position must be at least as good as it would have been had only the damaged or destroyed property been repaired or replaced and a lien placed on it.
- (1) Collateral value is not merely a matter of the priority of liens, but can also be a function of the value of the lien for each alternative.
- (2) We will consider our collateral position to be as good in any case where the loan is sufficiently collateralized by the lien after accommodating the borrower, regardless of the priority of the lien position. You must justify any exception in the case file.
- j. Collateral Appraisals. Formal appraisals, although rare, may occasionally be appropriate. This might arise in very large loans, especially MSE loans. Formal appraisals are performed by professional, licensed public appraisers. The ADLP or higher must approve requests for formal appraisals
- k. Relocation of Disaster Victims. Refer to subparagraph 37.h.(1) for guidance on treatment of prior liens on properties involved with relocation.
- l. Widely Scattered Collateral. When the damage is to property which is dispersed across a wide geographic area (e.g., billboards and vending machines), or when an applicant offers this type of property as collateral, the cost of obtaining hazard insurance coverage may be prohibitive. In these cases you should consider alternative collateral on which appropriate insurance can be obtained at reasonable cost.
- m. Release/Retention of Collateral. When we reduce a loan to an amount below the secured threshold, we are not compelled to release the collateral. Whether or not to release the collateral upon request must be based upon prudent credit judgment. You must address the reasons in the loan modification.
49. GUARANTEE REQUIREMENTS
- a. Definitions.
- (1) To guarantee is to assume responsibility for payment of a debt if the person(s) or concern primarily liable fails to perform.

- (2) A guarantee is the actual written agreement by which one assumes responsibility for ensuring payment of the debt or obligation of another.
- (3) A guarantor is the one who makes or gives the guaranty.
- (4) A principal, for purposes of this paragraph, means:
 - (a) For sole proprietorships, the proprietor;
 - (b) For General Partnerships, all general partners;
 - (c) For Limited Partnerships, all general partners and any limited partner who owns 20 percent or more of the partnership; and
 - (d) For corporations, any individual or legal entity who owns 20 percent or more of the voting stock.

NOTE: Only individuals and legal entities with 20 percent or more ownership are considered principals for guarantee purposes.

- (e) You determine the composition of the controlling group on a case-by-case basis. Some individuals who do not meet the definition of a principal may be in the controlling group, and the guarantee requirement applies. For example, this may occur in a family owned business, where several members of the same family each own less than 20 percent of a business, but together form a controlling group (see 13 CFR §121.103(a)).

b. Business Loans. Generally, we require all the principals to provide a blanket guarantee of the loan (except in cases of sole proprietorships). Depending on the adequacy of the collateral owned by the business, guarantees can be secured or unsecured. The guarantees of the principals are not a substitute for business collateral. They are a safeguard to protect our position. Refusal of a principal to provide a guarantee is a basis for declining an application or canceling a loan.

- (1) Unsecured Guarantees. If the business can adequately secure the loan with real estate, the guarantees of the principals should generally be unsecured.
- (2) Secured Guarantees. If the business does not have adequate equity in the real estate, the guarantees of the principals should generally be secured (even if the business has M&E, etc., which was also taken). However, if one or more principal(s)'s collateral is enough to secure the loan, you may require unsecured guarantees from the other(s).
- (3) Limited Guarantees. In some situations a limited guarantee may be appropriate. A limited guarantee may be unsecured or secured with either a limit to the maximum amount of a guarantee, or a limit to the guarantor's interest in collateral, or a limit to a percentage of the unpaid balance.

- c. Home Loans. Guarantees are not ordinarily necessary for home loans. However, sometimes all owners are not applicants. This usually arises among family members due to inheritance provisions, life estates, or estranged spouses, etc. In these cases, we generally require the non-applicant owner to execute our mortgage/deed of trust. In some states, this procedure is not legally sufficient to perfect our lien. Therefore, a guarantee, secured by and limited to their interest in the collateral property, may be appropriate.

50. HAZARD INSURANCE REQUIREMENTS

- a. General Requirements. We require hazard insurance on all secured loans to protect both the damaged property (real property and contents) and all insurable collateral. When the damaged property is real estate, insurance should be required to cover damaged real property *and* contents unless the contents are owned by another party (for example, property leased to another unaffiliated person/concern). Contents insurance is not required on undamaged collateral property where we have no collateral interest in the contents. Contents insurance is required on personal property loans over \$10,000. When collateral property other than the damaged property is pledged, hazard insurance is required on both the damaged property and the collateral property used to secure the loan.
- b. Inventory Insurance Requirement. Even if inventory is not taken as collateral, we must require business borrowers to insure all inventory if it represents an important source of income generation.
- c. Type of Insurance Coverage Required. Generally, required hazard insurance includes fire, lightning, and extended coverage. Hazard insurance must include coverage for the peril that caused the damage and the peril for which the disaster was declared. The CD/PDC or designee may waive this requirement after taking into consideration the common practices of the mortgage lenders in the disaster area. To make this determination the CD/PDC or designee should check the requirements of the three largest mortgage lenders in the disaster area.
- d. Amount and Terms of Coverage Required. Generally, borrowers must furnish hazard insurance equal to at least 80 percent of the insurable value of the property to be insured. Insurance required on collateral must name SBA's servicing office as mortgagee or loss payee.
- e. Evidence of Coverage Required. Borrowers must provide proof of required insurance coverage prior to disbursement of loan funds in excess of the unsecured threshold. The Legal Department must review deductibles to ensure they are satisfactory and may refuse to accept policies with excessive deductible amounts.
- f. Loan Stipulations. Borrowers must maintain the stipulated coverage throughout the entire term of the loan even if the loan has been sold to a third party. Most insurance on commercial property is written with a coinsurance clause providing that the insurer will not pay the entire amount of the loss, even within the stated policy limit, if at the time of the loss the amount of insurance in force is less than a stated percentage insured. Because most insurance claims are for partial losses, we should stress the need to maintain the amount of insurance coverage required by the coinsurance clause.

51. FLOOD INSURANCE REQUIREMENTSa. Definitions (for this paragraph).

- (1) Act. The Flood Disaster Protection Act of 1973, as amended.
- (2) FIA. The Federal Insurance Administration, a part of the Federal Emergency Management Agency.
- (3) NFIP. The National Flood Insurance Program authorized by the Act and administered by FIA. The NFIP includes an insurance program for indemnification against flood property damage, and stipulations for community participation which are intended to minimize future flood losses.
- (4) SFHA. An officially designated and defined Special Flood Hazard Area. These areas are designated on flood hazard boundary maps. The SFHAs normally mean the A zones which indicate the area in the 100-year floodplain. Other designations of special flood hazard areas, such as E (erosion), M (mud-flow), or V (velocity) are included as SFHAs.
- (5) Construction. Defined by the regulations based on the Act to include the "acquisition, construction, reconstruction, repair, or improvement of any building or mobile home on a foundation, and any machinery, equipment, inventory, fixtures, or furnishings, contained or to be contained therein."
- (6) Flood Hazard Boundary Map. A map published by FIA indicating the boundaries of SFHAs.
- (7) Flood Hazard Boundary Map Effective Date. The date a flood hazard boundary map became effective.
- (8) Participating Community. A community which is participating in the NFIP by adhering to FIA/FEMA flood mitigation standards.
- (9) Nonparticipating Community. A community which is not participating in the NFIP and in which NFIP flood insurance coverage is not available. A nonparticipating community may be under sanction (see definition below), which has important consequences.
- (10) Community Under Sanction. A community the FIA has acted to sanction for failure to meet the requirements of NFIP and in which NFIP flood insurance is not available. This includes communities which are nonparticipating after one year has elapsed since the flood hazard boundary map effective date (since SFHAs were formally identified within the community), or a community which has withdrawn from or failed to adopt or adhere to NFIP requirements.
- (11) Insurable Property. Property which can be insured under a standard NFIP flood insurance policy.

- (12) Uninsurable Property. Property which cannot be covered under a standard NFIP flood insurance policy (e.g., unimproved land, gas and liquid storage tanks, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, motor vehicles, **leasehold improvements (LHI)**, and certain contents of basements). Whether property is insurable is unrelated to eligibility. Some uninsurable property (e.g., crops and livestock and property in the CBRS) is not eligible, while other uninsurable property (e.g., some motor vehicles, **LHI**, and some contents of basements) is eligible.
- b. Determination of Location in an SFHA. We are required to make a good faith determination whether a property is located within an SFHA. The determination is made by **an authorized SBA employee or an SBA contractor** and is a permanent part of the case file. Letters from real estate or insurance agents or other parties are not acceptable substitutes for our determination based on the maps.
- c. Contested Location in an SFHA. SBA must inform an applicant/borrower, in writing, that, if they disagree with our determination, they may submit evidence directly to FEMA (include the appropriate office address) that the property is safe from the base flood. If FEMA provides a letter stating that the property is not in an SFHA, we may remove the flood insurance stipulation.
- d. Flood Zone Determination on Relocation Property.
- (1) When relocation property is known, we base the SFHA determination on the relocation site. If not known, we base it on the damaged property location.
 - (2) When the relocation site is temporary, such as during reconstruction of the permanent site, we must determine whether any loan proceeds will be used toward property stored or used in that location, or whether any of our collateral property will be at that location. If either situation exists, we must make a determination for both the temporary site and the damaged site.
 - (3) If we learn at any time while in possession of a borrower's case file that the borrower has moved, we must make a new determination.
- e. Property Partially Located in an SFHA.
- When only a portion of a property is in an SFHA, we consider the property to be located within the SFHA and subject to the flood insurance requirement. An exception to this rule occurs when the entire portion of the property located within the SFHA is uninsurable, and all the insurable property is located outside the boundary of the SFHA. In these cases, the property is considered as not in an SFHA.
- f. Property Subject to Flood Insurance Requirement. We require flood insurance on the real estate, contents and any other improvement which can be insured:

- (1) For a homeowner, the property subject to the flood insurance requirement includes the residence, contents (personal property), and appurtenant structures;
 - (2) For a residential tenant, the property is the contents (personal property); and
 - (3) For a business which operates in its own building, the property is the building, contents, and appurtenant structures.
- g. Statutory Requirements for Property Located in an SFHA. The Act requires that, as a condition of any Federal assistance secured by improved real estate (or a manufactured home) located in an SFHA, the building and any personal property securing the loan must be covered by flood insurance before any loan disbursement. Additionally, any loan used for construction purposes in an SFHA is subject to this requirement. Specific provisions govern certain circumstances, as follows.
- (1) If the property is located in a community under sanction, flood insurance is not available and applicants cannot meet the statutory requirement. Therefore, applicants in a community under sanction are ineligible. This bar applies even if the property is wholly uninsurable. However, applicants who relocate to a participating community will be able to meet the statutory requirement and are eligible. Similarly, applicants who relocate to a site not in an SFHA (whether or not in a community under sanction) are not subject to the statutory flood insurance requirement. You must require a notice of disqualification for all relocations from an SFHA in a sanctioned community (see subparagraph 37.h.(2)(c) & (d)).
 - (2) We may encounter a nonparticipating community where less than one year has elapsed since the flood hazard boundary map effective date. Although NFIP flood insurance is not yet available, these communities are not under sanction and loans may be approved to applicants in these communities without a statutory or regulatory requirement to obtain flood insurance. These loans must be approved within one year of the flood hazard boundary map effective date. The date of the loan approval (obligation of funds) governs whether this exception applies. Neither the date of the disaster nor the date of the application is relevant.
 - (3) If the property is wholly uninsurable (e.g., a driveway and bulkhead on otherwise unimproved land), do not require flood insurance. If there is a question of insurability, refer to the General Property Form of the Standard Flood Insurance Policy. If evidence is submitted to show uninsurability, the stipulation has been satisfied because the borrower has obtained the maximum coverage available, which is none, and need not be removed by loan modification action.

h. Amount of Coverage Required By Law.

- (1) SBA requires that flood insurance coverage be in an amount equal to the insurable value of the property (real property and contents) or the maximum coverage available, whichever is less. Neither the statutory nor the regulatory requirements apply to property not located in an SFHA, regardless of whether in a community under sanction or a nonparticipating community.
- (2) If flood insurance is required by the Act and the regulations, you must include the standard flood insurance stipulation in the LAA. This stipulation:
 - (a) Requires the borrower to obtain and maintain the insurance in the full insurable value of the real property and contents;
 - (b) Warns the borrower of future ineligibility if the insurance is not maintained; and
 - (c) Requires SBA be named as mortgagee or loss payee on secured loans.

i. Amount of Coverage for Secured Loans Required By Policy.

- (1) If flood insurance is not required by the Flood Disaster Protection Act of 1973 (as amended), SBA will require flood insurance (without further justification) on the real and personal property as a matter of policy when:
 - (a) Rising water caused the flooding. However, flood insurance is not required if the cause of the flooding would not have been covered by NFIP flood insurance, e.g., groundwater seepage or sewer backup (unless these are part of general flooding in the area that also involves this victim), runoff or channeled water (unless the surface flooding in the flooded area was caused by runoff or channeled water) or wind driven water (e.g., where gale force winds damage a roof or blow out windows permitting rain water to cause damage inside the structure); and
 - (b) The flooding caused damage to insurable real property and contents (including basements of insurable structures); and
 - (c) The borrower owns the real property that has been damaged by the flood or is responsible for making repairs to the damaged property.
- (2) If the flood damaged property is not taken as collateral, the damaged property must still be covered by flood insurance.
- (3) The amount of coverage will be the lesser of 1) the total of the disaster loan, 2) FMV of the disaster damaged property, or 3) the maximum insurance available.

- (4) If the flood insurance would be required under this subparagraph but the disaster victim is not able to obtain the insurance because the property is in an unmapped or sanctioned community, you can delete the standard flood insurance clause in the LAA. You must justify this deletion in the case file.
- j. Flood Insurance Coverage for Other Loans. If the disaster-damaged property, is not located in an SFHA, but is subject to risk of flood loss (e.g., the loan is to repair flood damage, such as M&E, etc., or the property has been repeatedly flooded), we may require flood insurance in situations other than as described above. You must justify this requirement in the case file. Generally, the amount of coverage will be the lesser of the loan amount or the maximum insurance available.
- k. Alternatives to National Flood Insurance Coverage.
- (1) Insurance coverage for flood losses from carriers other than NFIP is an acceptable alternative, provided the community where the property is located is participating in NFIP. The coverage must:
- (a) Be a standard NFIP flood insurance policy, and be issued by an insurer licensed to do business where the property is located; and
 - (b) Include an endorsement that the insurer must give 30 days notice of cancellation for non renewal to the insured and SBA, and include information on NFIP in that notice; and
 - (c) Guarantee that coverage is at least as broad as offered by the standard NFIP flood insurance policy and contains a mortgage interest clause similar to the one in the standard NFIP flood insurance policy.
- (2) Insurance coverage for flood losses from carriers other than NFIP is not permitted if the community where the property is located is not participating in NFIP.
- l. Evidence of Purchase of Required Flood Insurance Coverage. The LAA requires the borrower to submit evidence of the purchase of the required flood insurance coverage to SBA prior to any disbursement. Evidence means a copy of the issued policy or other proof of the coverage obtained. A copy of application for insurance is not acceptable.
- m. Consequence of Failure to Maintain Required Flood Insurance Coverage.
- (1) Applicants (disaster or otherwise) who were under a Federal requirement to maintain flood insurance and failed to do so, are not eligible for SBA assistance for the uninsured property(s). This includes applicants located in an SFHA who obtained a mortgage from a federally insured lender in 1994 or later. This bar applies to non-flood disasters and to flood damage in excess of the flood insurance coverage the applicant should have maintained on the property(s).

Exception: A loan approval can be recommended if the applicant is located in an SFHA and can demonstrate:

- (a) The lender did not provide the borrower with information on the flood insurance requirement; or,
- (b) The lender incorrectly informed the applicant that the damaged property was not located in an SFHA.

NOTE: There may be rare cases where the applicant(s)/principal(s) signed as a guarantor only on an existing Federal loan. In these cases, a loan approval can be recommended if the applicant(s)/principal(s) can fully document they did not have the control to maintain the required insurance.

- (2) The National Flood Insurance Reform Act of 1994 (NFIRA), Public Law 103-325, contains certain provisions regarding the purchase and maintenance of flood insurance in order to qualify for Federal assistance, including SBA disaster assistance. Applicants who received flood disaster assistance that was conditioned on obtaining flood insurance under Federal law, but who did not obtain and maintain the insurance, are not eligible for Federal disaster relief for that specific property.

NOTE: Verification of compliance can be found on the NEMIS Report, Insurance screen. A copy of this report must be scanned into the case file.

- (3) Applicants who received financial assistance from SBA through its regular business loan programs are subject to this requirement. The current LAA for these programs requires flood insurance for the business and/or collateral located in an SFHA, and that the borrower maintain it for the term of the loan. There may be cases where the borrower was not required to obtain and maintain insurance. In these cases, you must document the case file to show that insurance was not required, etc., and if practical, have a copy of the authorization scanned.
- (4) These provisions apply to previous SBA disaster loans even if the loans were subsequently sold to a third party.

- n. Effect of Obsolete "If/When" Condition. In the past, the LAA sometimes imposed an "if/when" or "when identified/when available" condition. This condition is unenforceable.

52. EFFECT OF FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988) AND WETLANDS PROTECTION (EXECUTIVE ORDER 11990) REQUIREMENTS (SEE 13 CFR §120.172)

These Executive orders apply to applicants with total eligible damage (inventory, M&E, structures, facilities, etc.) in excess of the regulatory limit when all of the following apply.

- a. The applicant qualifies as an MSE and the proposed loan approval is more than \$1,500,000.
- b. Sustained damage to structures and/or facilities equals 50 percent or more of their predisaster value.
- c. The damaged real property (structures and/or facilities, etc.) is situated within a 100-year floodplain (Zone A).

NOTE: If an approved loan to an applicant suffering damage as detailed above would constitute a critical action, the two Executive orders apply if the damaged real property is situated within a 500-year floodplain. Critical actions are defined as applications from:

- (1) Nursing homes, hospitals, medical clinics, etc., whose occupants lack mobility and any flood can result in the loss of life; and
- (2) Liquefied natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials.

53. ANTI-DISCRIMINATION COMPLIANCE REQUIREMENTS

- a. Applicant's Agreement of Compliance. Whenever disaster loan funds of more than \$10,000 are allocated for construction, we require all borrowers to execute SBA Form 601, "Applicant's Agreement of Compliance."
- b. Special Provisions Applicable to Business Loans. All business concerns receiving disaster assistance must agree not to discriminate in any business practice, including employment practices, on the basis of race, sex, or other categories cited in 13 CFR §112 and §113. SBA Form 722, "Equal Employment Opportunity Poster," and SBA Form 793, "Notice to New SBA Borrowers," are given to all business borrowers at the time of loan closing to inform them of their civil rights compliance requirements.

54. REQUIREMENTS FOR REAL ESTATE REPAIR

The dollar amount of a disaster loan for RE dictates whether stipulations are automatic (standard requirements) or optional (additional requirements).

- a. Standard requirements apply to both unsecured and secured loans. They are activated when you use the standard UP codes for RE repair. Refer to the LAA standard text for complete stipulations. These stipulations advise the borrower that:
 - (1) All other funds received for damages and/or necessary to complete construction/repair must be injected into the project prior to SBA's loan disbursement. This protects the Agency from investing in a project that cannot be completed.
 - (2) Lead based paint is prohibited on certain interior and exterior surfaces.

- (3) Borrowers must submit a valid building permit, or evidence that local authorities do not require a permit for all secured loans. Based on local requirements, when Center Counsel or designee determines that permits are not necessary, we consider the stipulation met without specific evidence from each borrower.
- b. Additional Requirements. You must include these additional requirements if the RE portion of the loan is \$25,000 or more (refer to the Catalog of Optional Loan Authorization Text, **appendix 16**, for complete stipulations):
- (1) The borrower must submit a written construction contract prior to disbursement of RE funds;
 - (2) The borrower must submit evidence that the contractor carries Builder's Risk and Workman's Compensation Insurance prior to disbursement of any RE funds; and
 - (3) SBA may require the borrower to submit lien waivers from contractors, sub-contractors, etc., as appropriate.

NOTE: If during disbursement, the borrower cannot satisfy these specialized stipulations and evidence in the case file demonstrates SBA is adequately protected, Center Counsel or designee may waive any of these stipulations with written justification in the case file and with written notice to the borrower.

- c. Performance Bonds. Responsibility for contractor selection rests with the borrower, but we encourage the use of bonded contractors. On rare occasions, we may require that the borrower's contractor(s) post a performance bond. This is a credit judgment that generally arises on major construction projects and involves discussion among LP, the Legal Department, **and the PDC Loss Verification Department**. You must justify this requirement in the case file and add the appropriate stipulations to the LAA. Generally, we require a 100 percent bond executed by a corporate surety approved by the Treasury Department naming the borrower as obligee on the American Institute of Architects Form or comparable coverage. SBA is not to be named as obligee, nor is the term "completion bond" to be used. Do not require this when SBA funds are not being disbursed until completion of the project (such as in a take-out commitment).

Exception: When approving loan funds due to contractor malfeasance, a performance bond is required. This requirement may be waived at the ADLP level or higher. Any waiver of this requirement should be fully justified in the case file **(see paragraph 112.c.)**.

- d. Provision for Seismic Safety. All new building construction **or an addition to an existing building** financed by a disaster loan must meet the seismic safety requirements specified in the National Earthquake Hazards Reduction Act of 1977. Use of UP codes **17**, 18, or 19 will automatically trigger a specific stipulation in the LAA. In rare cases of custom UPs, the LO must add this stipulation to the LAA:

“Prior to disbursement of loan funds for the construction of a new building or an addition to an existing building, the borrower shall submit evidence, satisfactory to SBA, that the construction conforms to the “National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings.” This evidence shall be in the form of a certificate by a licensed construction engineer, architect, or similar professional.”

55. STIPULATIONS RELATIVE TO LEASED PREMISES

Applicants may own real estate improvements or leasehold improvements which are located on leased premises. When repair, replacement, or construction is necessary, you must carefully review the terms and conditions of the lease, and require appropriate stipulations in the LAA for loans in excess of \$10,000 as follows.

- a. Requirements for Real Estate Construction or Repair. The same criteria for imposing standard or additional requirements for real estate construction or repair of owned property apply to any RE or LHI located at leased premises.
- b. Lease Extension Requirement. If the existing lease is for a period at least equal to the proposed loan term, there will generally be no special risk. If the lease is shorter than the recommended loan term, there is likely to be a significant risk, and the procedures below must be followed.
 - (1) If practical, require an extension of the lease for a period equal to the term of the loan. Use the standard lease extension stipulation in the LAA.
 - (2) If an extension is not practical, the question of who owns the real estate/leasehold improvements at the expiration of the lease becomes crucial. You should consult with Center Counsel as necessary to interpret these leases.
 - (a) If the applicant has no right to remove the improvements, the applicant does not actually own the improvements in fee, since they become property of the landlord at the expiration of the lease. In these cases we limit eligibility to the use value for the remaining term of the lease (unless the lease is extended).
 - (b) If the applicant has the right to remove the improvements at the end of the lease, you must consider:
 - (i) If the applicant plans to remove the LHI and relocate;
 - (ii) If relocation is practical;
 - (iii) If we can authorize relocation; and
 - (iv) If the applicant can finance the relocation.
 - (3) As an alternative to a lease extension, you may require other or additional collateral.

- c. Lease Requirement. If the borrower does not have a formal, written lease, the LAA should require the borrower to obtain a lease "satisfactory to SBA."
 - d. Lease Modification Requirement. If any of the terms and conditions of an existing lease is unsatisfactory, the LAA should specify the necessary changes.
 - e. Landlord's Waiver Requirement. Generally, we require borrowers to obtain a landlord's waiver providing SBA employees with free access to the leased premises in case of default or foreclosure to remove collateral items. A landlord's waiver is not necessary when:
 - (1) we have an assignment of the lease as collateral, or
 - (2) we have not taken security interests in any property in the leased premises, or
 - (3) disaster loans are made to repair, or replace disaster-damaged manufactured housing where the owner of the damaged manufactured housing is not the owner of the land on which the manufactured home is located.
56. USE OF LOAN PROCEEDS

You must use authorized use of proceeds (UP) codes to prepare the LAAs for physical and economic injury disaster loans. These are:

- a. Home Loans.

UP-01	Personal Property
UP-02	Motor Vehicle (automobile, pickup truck, minivan, etc.)
UP-04	Manufactured Housing
UP-05	Refinance Real Estate Lien
UP-06	Refinance Manufactured Housing/Other Lien
UP-07	Repay IHP Grant
UP-17	Real Estate Repair/Replacement
UP-18	Real Estate Relocation Purchase/Construction
UP-19	Total Real Estate Reconstruction (at damaged site)
UP-20	Landscaping
UP-24	Debris Removal
UP-25	Other Land Improvements (including bridges, retaining walls, etc.)
UP-26	Mitigation
UP-27	Engineering/Architectural Reports
UP-28	Geological Studies
UP-29	Moving and Storage Expenses
UP-30	Interim Financing

UP-41	Code Required Damaged Structure Elevation (Forced Elevation)
UP-42	First Year's Insurance Premium
UP-43	Typhoon Repair
UP-44	Typhoon Real Estate Replacement
UP-55	Vessels
UP-56	Aircraft
UP-00	Custom Use of Proceeds

b. Business Loans.

UP-04	Manufactured Housing
UP-06	Refinance Manufactured Housing/Other Lien
UP-17	Real Estate Repair/Replacement
UP-18	Real Estate Relocation Purchase/Construction
UP-19	Total Real Estate Reconstruction (at damaged site)
UP-20	Landscaping
UP-24	Debris Removal
UP-25	Other Land Improvements (including bridges, retaining walls, etc.)
UP-26	Mitigation
UP-27	Engineering/Architectural Reports
UP-28	Geological Studies
UP-29	Moving and Storage Expenses
UP-30	Interim Financing
UP-41	Code Required Damaged Structure Elevation (Forced Elevation)
UP-42	First Year's Insurance Premium
UP-43	Typhoon Repair
UP-44	Typhoon Real Estate Replacement
UP-50	Inventory
UP-51	Machinery and Equipment
UP-52	Furniture and Fixtures
UP-53	Leasehold Improvements
UP-54	Vehicles (business vehicles only)
UP-55	Vessels
UP-56	Aircrafts
UP-58	Refinance Real Estate
UP-59	Refinance Machinery and Equipment/Other Liens
UP-00	Custom Use of Proceeds

c. Economic Injury Disaster Loans.

UP-60	Working Capital
UP-61	Working Capital with Periodic Disbursements
UP-62	Note Payable
UP-63	Accounts Payable
UP-64	Working Capital-Business/EIDL (B/E) Loan
UP-00	All Custom Use of Proceeds

57. RESERVED

58. GENERAL LOAN STIPULATIONS FOR LARGE LOANS (GREATER THAN \$1 MILLION)

a. Net Earnings Clause (NEC) must be used in loan authorizations as follows:

1. The clause must be included for all large loans and MSE loans with an initial maturity of 15 years or longer unless waived by the AA/DA or designee.
2. The NEC may be required on any business physical or EIDL loan at the discretion of the ADLP.
3. The percentage of net earnings to be applied to the loan balance must be between 5% and 10% at the loan officer's discretion.
4. The payment is due no later than 90 days following the close of the Borrower's fiscal year, but may be paid quarterly or spread over 12 months if a financial hardship can be demonstrated.

b. Distribution and Compensation Clause must be used in the LAA to include a limit on direct and indirect compensation (of all types) to the owners and officers of the business. However, a sub-chapter S corporation, partnership (limited or general), or a limited liability entity (LLE) may make distribution to shareholders, partners, or members, respectively, for the payment of tax liability attributable to earnings. Additionally, other transfers such as a lease payment to an owner of the company who also owns the building used by the company must also be limited.

c. IPO Clause must be used in the LAA to give SBA the option to require payment in full on the loan in the event that the borrower sells additional securities. This clause will be invoked for a private placement or public offering of securities (common or preferred stock or long-term debt with an equity feature).

d. In those rare cases when a loan officer determines that a NEC, distribution and compensation clause, and a stock offering clause are not appropriate for a particular loan, the reasons must be fully documented in the case file. While the General Loan Stipulations are mandatory for large loans (greater than \$1 million), the stipulations may be appropriate for loans of \$1 million or less.

CHAPTER 6

REGISTRATION, INTERVIEWING, AND SCREENING59. DEFINITIONS

- a. National Processing Service Centers (NPSC). Generally, FEMA staffs and operates NPSCs in four locations, Maryland, Puerto Rico, Texas, and Virginia. These nonpublic facilities are active only in Presidential disasters, and are designed to be the first contact point for disaster victims seeking assistance via a toll-free phone number (800-621-3362). The NPSC:
- (1) Registers victims;
 - (2) Identifies those qualified to receive a FEMA referral [see (c) below]; and
 - (3) Provides information about on-site locations and dates of openings and closings.

NOTE: SBA customer service representatives (CSRs) are assigned to the CSC to answer questions that disaster victim(s) may have after registering with FEMA.

- b. Types of Assistance Centers.
- (1) Joint Field Office (JFO): FEMA and the State establish a nonpublic facility to coordinate activities of all the participating disaster relief agencies and organizations. Usually, the participating agencies and organizations have representatives present at the JFO to conduct and monitor their own internal operations and to assist in the inter-agency coordination effort.
 - (2) Disaster Field Office (DFO): SBA establishes a nonpublic facility to coordinate its activities and provide administrative and management functions for disaster recovery efforts primarily in Agency declarations and sometimes in Presidential declarations. However, in Presidential declarations, SBA does not usually establish its own DFO; SBA normally co-locates with FEMA and the State in the JFO.
 - (3) Disaster Recovery Center (DRC): A joint Federal/State facility established by FEMA and the State where representatives of all participating Federal, State, and local disaster relief agencies and organizations assemble to issue program applications and related information. Depending on the size and scope, FEMA may set up more than one DRC. SBA is represented in each DRC.

NOTE: In some declarations state and local officials elect to identify the various locations using different terminology, such as Local Assistance Centers (LAC) or Family Assistance Centers (FAC), etc.

- (4) Disaster Loan Outreach Center (DLOC): A facility established and staffed by SBA in an Agency or Presidential declaration to assist disaster loan applicants in obtaining applications, returning their completed applications, and receiving help in completing their forms. SBA staff is also available to answer all questions, close loans, and help with reconsideration and late application requests. Usually, SBA is the only agency present at a DLOC and depending on the size of a disaster may establish more than one center. In some cases, SBA remains at a former DRC location after FEMA and other agencies have left, at which point it becomes a DLOC.
- (5) Business Assistance Center (BAC): A facility established by State and/or local officials and staffed by various organizations including SBA to assist businesses in recovering from the disaster.
- (6) Business Recovery Center (BRC): A facility established and staffed by SBA, along with various other organizations, in an Agency or Presidential declaration to assist businesses.

c. Decline - Automatic (DECA). In Presidential declarations, home loan applicants whose household incomes are below the minimum income levels stated in the Income Test Tables (provided by SBA) are classified as DECA. They are referred by the FEMA registrar directly to IHP, bypassing the SBA process. For statistical purposes DECA are not counted as SBA interviews.

d. A Summary Decline is an SBA action (rule-of-two required) usually resulting in immediate referral to IHP or other organizations. This action is appropriate if repayment ability is not evident using the preliminary FDM approach during an individual interview or while screening a home loan application.

60. FEMA REGISTRATION AND THE SBA INTERVIEW PROCESS

a. FEMA Registration Process - Presidential Disasters.

- (1) Home loan inquirers who call the NPSC are registered on FEMA Form 90-69, "Disaster Assistance Registration." Those not classified as DECA are referred to SBA and are issued an application.
- (2) Business loan (including EIDL) inquirers who call the NPSC are also registered using FEMA Form 90-69. However, because there are no DECA for business applicants, all inquirers are referred to SBA.
- (3) If the victim has not registered with FEMA and DCMS access is unavailable, use SBA Form 700, "Disaster Business Loan Inquiry Record," to document business/EIDL interviews and record essential business information.

NOTE: We cannot refuse to issue an application to a disaster victim if they have not registered with FEMA. You should encourage the victim to register and advise them of the potential assistance from programs other than SBA (when applicable).

- b. SBA Interview Process - Agency Declarations. You must use an SBA Form 700 to document all interviews if DCMS is unavailable.

61. INTERVIEWER'S RESPONSIBILITIES

- a. Initial Interview. This is your first contact with a disaster victim. Their perception that SBA is ready, willing, and able to affect a speedy recovery through its loan program depends on how well you explain:
- (1) The program;
 - (2) How to complete the application forms;
 - (3) The importance of fully complying with our filing requirements; and
 - (4) That free help filling out the forms is available at an assistance center.
- b. The purpose of the initial interview is to determine whether the disaster victim and the damaged property are generally eligible, and to explain the application forms and process in simple terms. After thoroughly explaining the program, furnish the disaster victim with the appropriate application forms and instruct them to return the forms by the application filing deadline. You must not make final eligibility determinations at the initial interview stage. If it is obvious that the applicant or the property is not eligible (e.g., the applicant does not own the property or the property is not located in a declared area) you must inform the applicant of the potential decline action and give them the opportunity to refuse the application.
- c. Reporting (counting) the Interview. You must ask victims who visit DRCs or DLOCs if they have registered with FEMA. If not, advise them to register with FEMA and explain the potential benefits available from programs other than SBA. However, if they have previously registered, you must exercise care to avoid counting an interview or application issued more than once. This is important when an applicant previously registered by phone with the NPSC and subsequently went to a DRC to obtain an application, rather than waiting for the one which was mailed from the Mailout Center. Should this occur, provide the application(s) but do not count the applicant's request for a second application as either an interview or application issued.
- d. Referral by SBA.
- (1) In Presidential declarations we may determine that applicants with household incomes above the income test table threshold also lack repayment ability. However, because the table assumes little or no debt, you must, if DCMS access is unavailable:
 - (a) Determine their gross income and monthly fixed debt using the income and debt sections of SBA Form 700;
 - (b) Include any extraordinary expenses (e.g., unusually high and long-term medical costs, child care, child support, etc.); and

- (c) Apply the preliminary FDM approach using the Summary Decline Worksheet (SBA Form 2122) on all home loan applicants with incomes below \$50,000 who are not self-employed to determine if we issue an application or a summary decline.
 - (d) Issue an application without applying the preliminary FDM approach when the victim:
 - (i) Indicates that he/she is a sole proprietor of a business;
 - (ii) Has household income which includes rents, farms or other non salary sources (but not including alimony, child support, disability, social security, pensions, etc.); or
 - (iii) Has household income in excess of \$50,000.
- (2) In summary decline situations, SBA Form 1363, 1363A, 1363NR, or 1363RC, "Summary Decline Letter," is prepared. The original SBA Form 1363/1363A/1363NR/1363RC is signed by an SBA employee and given to the disaster victim with one copy retained for SBA's records. The applicant must sign SBA Form 700 and SBA Form 1363/1363A/1363NR/1363RC. Remember to include the FEMA registration number in the upper right hand corner of the SBA Form 700.
- NOTE:** The 1363NR is used when the lack of repayment ability is based on an application filed by only one individual (spouse, partner, co-owner, occupant, etc.) with no referral to FEMA for possible grant assistance. However, if the inclusion of the income of the non-applicant spouse, partner, co-owner, occupant, etc. still results in a lack of repayment ability, a referral to FEMA for grant assistance is warranted.
- (a) Presidential Declarations. For reporting purposes, you should count a disaster victim who receives a summary decline at the interview stage as a summary decline at interview only. You would not report this as an SBA interview.
 - (b) Agency Declarations. For reporting purposes, you should count a disaster victim who receives a summary decline at the interview stage as an SBA interview and a summary decline at interview.
 - (c) Summary decline procedures do not apply to Business or EIDL inquirers.
- (3) In Agency declarations, other organizations (e.g., ARC, Mennonite Disaster Services, etc.) often assist disaster victims unable to qualify for a loan. When an Agency declaration is issued, we will inform our personnel if other organizations are accepting referrals. If ARC or other organizations accept referrals from SBA, at the interview stage issue a summary decline using SBA Form 1363RC (for ARC) or 1363A (for other organizations). The loan officer must enter the name of the referral agency in the body of the letter.

62. INTERVIEW TOPICS

- a. Home and Physical Business Loans. Thoroughly discuss the purpose of the program with the inquirer. You must cover the following: loan limits; property eligibility; ownership and location of the damaged property; terms; interest rates; and possible mortgage refinancing, if appropriate.
- (1) Repayment Ability. Issuing a loan application does not guarantee that we will approve the loan. We examine FTR/income information to substantiate repayment ability, and review credit reports to determine if obligations, including any current or past Federal debts, have been or are being met.
 - (2) Secondary Home Ineligibility. A secondary home and its contents are not eligible for home loan consideration, but may be eligible as rental property under the business loan program.
 - (3) Condominiums, Homeowner Associations, etc. When you are made aware that the home loan inquirer has damaged real property, which is part of a Condominium or Homeowner's Association, you must follow the guidance provided in paragraphs 24 and 25.
 - (4) Relocation. There is a statutory prohibition against using SBA disaster loan funds to voluntarily relocate outside the business area where the disaster occurred (see paragraph 37).
 - (5) On-Site Verification of Damage. The dollar amount of physical loan eligibility is based upon an on-site inspection of the damaged property by the LV. Applicants, prior to the time of inspection or even the interview, may dispose of damaged property or debris for health and safety reasons or avail themselves of free or low cost disposal services. Suggest (but do not require) pictures, written lists or receipts for property prior to removal if practical. Debris removal is a part of the recovery and should not be unduly burdened by our requirements.
 - (6) Insurance Coverage/Proceeds/Requirements. There is a statutory (Section 7(b), Small Business Act) prohibition against providing assistance to applicants whose losses are covered by insurance or otherwise compensated. You must ask if any insurance coverage was in force on the damaged property, and if a settlement was received. If so, you must advise the applicant not to voluntarily apply any proceeds to reduce existing mortgage(s). Explain that if the proceeds can be used in restoration, we will deduct them from eligibility. If we approve the loan we may require the borrower to purchase and maintain flood insurance and/or hazard insurance.
 - (7) Information Required. You must tell the inquirer to comply with the filing requirements listed in the applications.

- (8) Application Filing Deadline(s). You must enter the date of the filing deadline on the application.
- b. Economic Injury Disaster Loans (EIDL). You must thoroughly discuss the purpose of the EIDL program with the inquirer. Although you cannot make eligibility determinations at the interview stage, you must tell the disaster victim that only eligible small business concerns and small agricultural cooperatives unable to obtain credit elsewhere are eligible, and then only to the extent that business and personal financial resources have been fully utilized to offset the economic impact of the disaster.
- (1) Repayment Ability. Issuing a loan application does not guarantee that we will approve a loan. We examine FTR/income information to substantiate repayment ability and review credit reports to verify the manner in which obligations, including current or past Federal debts, are being or have been met.
- (2) Legislative Loan Limit. The amount of an EIDL, together with all business companion physical damage loans, must not be more than the \$1,500,000 limit.
- (3) Relocation. There is a statutory prohibition against using SBA disaster loan funds to voluntarily relocate outside the business area where the disaster occurred (see paragraph 37).
- (4) Insurance Coverage/Requirements. There is a statutory prohibition against providing assistance to applicants whose losses are covered by insurance or otherwise compensated. You must ask the inquirer if any business interruption insurance coverage was in force and if a settlement was received. If we approve a loan, we may require the borrower to purchase and maintain hazard and/or flood insurance depending on the amount of the loan. The provision for voluntary application of business interruption insurance proceeds to reduce outstanding indebtedness applies similarly to voluntary application of physical insurance proceeds.
- (5) Information Required. You must tell the inquirer to comply with the filing requirements in the application, including SBA Form 1368, "Additional Filing Requirements for EIDL."
- (6) Application Filing Deadline. You must enter the filing deadline on the application.
63. HOME LOAN APPLICATION FORMS
- The following forms are contained in every home application package:
- a. SBA Form 5C, "Disaster Home Loan Application."
- b. IRS Form 8821, "Tax Information Authorization."
- c. Fact Sheet.
- d. SBA Form 2121, "Notice To All Applicants." (This form is included in all loan applications for a disaster that includes a Coastal Barrier Island Resource Area).

64. BUSINESS LOAN APPLICATION FORMS

The following forms are contained in every business application package:

- a. SBA Form 5, "Disaster Business Loan Application."
- b. SBA Form 413, "Personal Financial Statement." One form is required for each proprietor, each limited partner who owns 20 percent or more interest, each general partner, and each stockholder owning 20 percent or more voting stock.
- c. IRS Form 8821, "Tax Information Authorization." One form is required for each proprietor, each limited partner, each member who owns 20 percent or more interest, each general partner, each stockholder owning 20 percent or more voting stock, and each affiliate (see the following for ownership and affiliation definitions).

- (1) You must obtain financial information from each owner and principal, as defined below. Generally, it is not necessary to obtain financial information from non-owner managers unless they have voting or management control.

An owner or principal may be:

- (a) For sole proprietorships, the sole proprietor
- (b) For general partnerships, each general partner
- (c) For limited partnerships, each general partner and each limited partner who owns 20 percent or more interest in the applicant business concern
- (d) For corporations, each stockholder who owns 20 percent or more of the applicant's voting stock
- (e) For limited liability entities, each member who owns 20 percent or more interest.

NOTE: The owner(s) or principal(s) may be another business concern. For example, the applicant, a partnership, may have two partners; one is an individual and the other is a corporation.

- (2) In some cases you must consider certain individuals or business concerns to be owners even if any one or all of them owns less than 20 percent. This is appropriate if the certain individuals/concerns:

- (a) Collectively own 20 percent or more of the concern, or
- (b) Otherwise control the business (e.g., voting control, management control, etc.).

For example:

- (i) When two or more persons have an identity of interest, such as members of the same family or persons with common investments in more than one concern, and they collectively own 20 percent or more; each should be considered an owner.

(ii) When an individual owns less than 20 percent of a company, serves as its president, and manages the company, this individual should be considered an owner.

(3) Business concerns are affiliates if one concern controls or has the power to control another, or if a third party controls or has the power to control both. Generally, an affiliate may be any concern of which the applicant, or its principals, owns 50 percent or more. Other relationships may exist which may cause concerns to be affiliates. These include, but are not limited to:

(a) Common ownership or management

(b) Previous relationships or ties

(c) Individuals or business concerns with substantially identical business or economic interests, such as family members or common investments

(d) Business concerns that are economically dependent on each other through contractual or other relationships

(e) Other relationships as specified in 13 CFR §121.103

NOTE: For further information about affiliation, refer to 13 CFR §121.103. If you are unclear as to whether affiliation exists, consult your supervisor.

d. SBA Form 2202, Schedule of Liabilities.

e. SBA Form 1368, "Additional Filing Requirements for EIDL."

f. Fact Sheet.

g. SBA Form 2121, "Notice To All Applicants." (This form is included in all loan applications for a disaster that includes a COBRA.)

65. **RESERVED**

66. FILING PERIOD

a. For physical loss applications, 60 days after date of declaration.

b. For economic injury applications, 9 months after date of declaration.

c. For EIDLs pursuant to Secretary of Agriculture designations, 8 months from the Secretary's designation.

d. Extensions. FEMA or SBA may authorize extensions of the filing period.

e. Late Filed Applications.

(1) The ADLP or designee must take final action on all late application requests.

- (2) Generally, applications postmarked within the 15-day grace period of the filing deadline do not require a written request for late filing from the applicant.
- (3) Applications delivered in person or postmarked after the grace period require the applicant's written explanation for the late filing. These requests are only accepted if we determine the late filing resulted from substantial causes essentially beyond the applicant's control. Some examples of substantial causes for late filing that are essentially beyond the applicant's control may include, but are not limited to:
- (a) Where the applicant is an individual, the serious illness of the applicant or the serious illness or death of the applicant's immediate family member;
 - (b) Where the applicant is an entity, the serious illness or death of the principal owner of the applicant or his or her immediate family member;
 - (c) Late receipt of application by applicant due to disaster-related reasons (frequent moves, remote location, or lack of normal mail service);
 - (d) The applicant or applicant's principal owner was active-duty military officially stationed out of the disaster area during a substantial portion of the filing period;
 - (e) The applicant or applicant's principal owner was out of the country during a substantial portion of the filing period;
 - (f) The applicant is applying for a disaster loan to repair substantial hidden damage that was discovered after the filing deadline and that could not reasonably have been discovered before the deadline;
 - (g) Permanent or temporary relocation outside the disaster area, causing the applicant or applicant's principal owner to be unable to make repair, replacement, or relocation decisions;
 - (h) Open issues during and after the filing period pertaining to insurance, habitability of premises, or flood or municipal zoning requirements, that prevented the applicant or applicant's principal owner from making repair, replacement, or relocation decisions;
 - (i) SBA and/or FEMA error.

NOTE: If the applicant does not provide sufficient justification for the late filing, we issue a letter advising the applicant the late acceptance of the application has not been granted. However, we still scan the application and any accompanying documents.

- (4) When an application is received after the filing deadline grace period without a written justification or request for late filing, the customer service representative/loan officer must contact the applicant by telephone (when possible) to determine the reason(s) for the late filing. If telephone contact is made and the late acceptance is justified, forward to ADLP. If contact is not made, issue a letter advising the applicant that we require a written request and explanation for the late filing.

f. Late Requests for an Application

- (1) When a request for an application is received after the filing deadline with an acceptable explanation/proper justification for the delay, issue the application advising the individual that we will accept their late filed application if they return the completed application package within 14 days from the date of our letter.

- (2) When a request for an application is received after the filing deadline without proper justification, the customer service representative/loan officer must telephone (when possible) the individual requesting the application to determine the reason(s) for the late request. The chron log must clearly reflect the detailed conversation or the attempts made to contact the requesting individual.

a. If telephone contact is made and the explanation/justification for the late request is acceptable, issue the application advising the individual that we will accept their late filed application if they return the completed application package within 14 days from the date of our letter.

b. If attempts to contact are unsuccessful, issue a letter advising the individual that we require a written explanation for the late request for an application.

g. MREIDL applications

- (1) The filing period begins the date the essential employee receives their official call-up orders and ends 90 days after the date the essential employee is discharged or released from active duty.
- (2) Official call-ups are the mechanism for determining loan eligibility. Accordingly, loan requests for separate call-ups in the same fiscal year require a new loan application.

67. PLACE OF FILING APPLICATIONS

Normally, disaster loan applications are returned in person to a DRC, DLOC, or other assistance center. Applications returned by mail are forwarded to the PDC for scanning.

68. MILITARY RESERVIST ECONOMIC INJURY (MREIDL) APPLICATION FORMS

The following forms are contained in every MREIDL application package:

- a. SBA Form 5, "Disaster Business Loan Application."
- b. SBA Form 413, "Personal Financial Statement."
- c. IRS Form 8821, "Tax Information Authorization."
- d. SBA Form 2202, "Schedule of Liabilities."
- e. SBA Form 1368, "Additional Filing Requirements for EIDL."
- f. Military Reservist Fact Sheet.

69. SCREENING PROCEDURES

Screening is the process of examining applications to determine if they are acceptable. You should try to screen applications delivered in person while the applicant (or representative) is present.

- a. Customer Service Representative's (CSRs) Responsibilities (Field only). The CSRs must:
 - (1) Use the appropriate checklist (home or business);
 - (2) Determine the status (acceptable or unacceptable);
 - (3) Prepare the appropriate notice when needed (7-day or missing information letters);
 - (4) Not write on the application or supporting information (except date stamping). (Note: If the applicant requests assistance with completing the application or supporting information, the CSR may assist the applicant but must document the request for assistance in the chron log);
 - (5) Require the applicant or representative to initial and date changes (if the applicant is infirm or illiterate, the CSR may do so but must document the reason in the chron log);
 - (6) If the application is acceptable, remove the "Statements Required By Laws" section, if still attached, and return to the applicant; and
 - (7) Make no changes to the application or supporting documentation received by mail.

NOTE: Screening checklist(s), home or business, will not be used on applications received through the mail during the DCMS Application Entry process. These applications are forwarded to the PDC for scanning and DCMS Application Entry (see appendix 8).

b. Definition of Acceptable and Unacceptable Applications.

- (1) Acceptable applications meet all filing requirements, or are those which are signed and are reasonably completed (e.g., contain all required IRS Form 8821s.) Additionally, when screening a business application for a corporation (IRS Form 1120 or 1120S), partnership (IRS Form 1065), or nonprofit organization (IRS Form 990), copies of the FTRs will be a filing requirement. For LLEs, request the applicable FTR. However, if the business application does not include the FTRs, a 7-day letter must be sent as described in subparagraph 69.c. requesting the FTRs and the case file must be accepted as complete. Additionally, the filing requirements for MREIDL applications include a concurrence from the Reservist that they perform duties that are essential to the operation of the small business. As MREIDL applications may be filed while the Reservist is away on duty, the person who has the Reservist's power of attorney can make the certification, or file the application if the Reservist is the owner of the small business (13 CFR §123.505).
- (2) Unacceptable applications are those to which any of the following apply:
- (a) the application form is not signed or not reasonably completed, or
- (b) a fully completed, signed and dated IRS Form 8821 is not provided for each required taxpayer or entity.

NOTE: It is acceptable to have an application signed without a date.

c. Definition of 7-Day Letter and Notice of Missing Information Letter.

- (1) 7-day letters (SBA Form 1643Z, Hard Copy 7-Day Letter, field use only) are used for requesting missing information needed to make a processing decision on an otherwise acceptable application. You may only request the information that is pre-printed in the standard letter. A lack of response to this request by the end of the 7-day period may result in withdrawal of the application.
- (2) A Notice of Missing Information letter (SBA Form 1646) is used only for unacceptable applications to request information necessary to make the application acceptable.

NOTE: Do not return the original application package to the applicant. All available information will be entered into DCMS along with the scanning of all appropriate forms and documents.

d. Date Stamping. You must date stamp each application to record the actual date it was received by the Agency.

- (1) At screening, date stamp only the application.
- (2) When a date stamp is not available, handwrite the date of receipt. In all cases, record the actual date of receipt, not the date the mail is opened or the document is reviewed. If the volume of mail prohibits opening and date stamping all material received when received, hold each day's mail separately and record the actual date of receipt as time permits.

- (3) You must date stamp each document received subsequent to screening to record the actual date of receipt. However, when the applicant submits forms or documents under a cover letter, listing the information enclosed, or returns forms or documents with a copy of a 7-day letter, it is permissible to date stamp the cover letter or SBA's notice rather than each individual form or document. The person reviewing the submission for completeness must initial each item on the letter and indicate the item has been received.
- e. Summary Decline at Screening. In Presidential declarations, the CSR must apply both the minimum income test and the preliminary fixed debt method approach (see paragraph 61.d.). If the CSR determines that the applicant's income falls below the minimum income test or if a home applicant lacks repayment ability, the CSR must complete the Summary Decline Worksheet and the SBA Form 1363/1363A/1363NR/1363RC. The applicant's signature is not required on the applicable SBA Form 1363 provided the application is signed. However, if the applicant is not present to sign the reverse of the applicable SBA Form 1363, the screener must write "ON FILE" on the copy(s) to be retained.

It is not necessary to complete an SBA Form 700 at screening since we have a completed application. A home loan application resulting in a summary decline at screening is entered into DCMS but is not returned to the applicant.

f. Procedure for Unacceptable Applications.

- (1) Place the annotation "U" or "unacceptable" next to the date stamp recording the date received. (By placing this annotation next to the record of the date received, we will not confuse it with a subsequent record of the date we receive the information.)
- (2) Send a Notice of Missing Information letter to the applicant. When appropriate, contact the applicant by phone and explain what we need to accept the application. Encourage the applicant to submit the information either by fax (e.g., IRS Form 8821), mail, or delivery to the DRC, DLOC or appropriate assistance center. Prepare a chron log entry to reflect all contacts or attempted contacts.
- (3) When information is received that makes the application acceptable, date stamp it along with any new information, and enter any new information into DCMS.

g. Auto-Decline and Pre-LV Review Processes.

- (1) All home and business/EIDL applications received at an assistance center or in the mail will go through the Auto-Decline process at DCMS Application Entry. SLO concurrence is not required on Auto-Declines. Files not qualifying for Auto-Decline will be forwarded for Pre-LV review.

For home applications, these processes include utilization of the minimum income test, preliminary fixed debt method, and credit bureau report. For business applications, only the credit bureau report is addressed. Both home and business/EIDL applications are also subject to a property eligibility review under the Pre-LV Review process.

- (2) If the SLO does not concur with the Pre-LV decline recommendation, case files with physical damages are forwarded for verification and then to LP for assignment. However, Stand Alone EIDLs and MREIDLs are forwarded directly to LP for assignment.

70. RESERVED

CHAPTER 7

PROCESSING OF APPLICATIONS71. PRELIMINARY STEPS IN LOAN PROCESSING

- a. Determining Case File Age. You must review each case file for "file age." "File age" is the number of days from the date SBA receives the application, either in the field or at the PDC, to the current date. It is the loan officer's responsibility to select, assign, and process the oldest case files first, unless your supervisor instructs you differently.
- b. Reviewing Each Case File for Completeness.
 - (1) You must first review the screening checklist (if applicable), scanned documents, and the overall case file content. If a case file is incomplete for processing, you must:
 - (a) Contact the applicant by telephone; and
 - (b) Obtain the missing information by phone whenever possible.
 - (2) If a 7-day letter (SBA Form 1643, Automated 7-Day Letter) is necessary, it must:
 - (a) Clearly state the needed information;
 - (b) Caution the applicant that we may withdraw their application if we do not receive the information in 7 calendar days (see paragraph 82 for withdrawal procedures); and
 - (c) Only request relevant information.
- c. Making Initial Telephone Contact. When you initially contact an applicant by phone, you must do the following:
 - (1) Always give your full name.
 - (2) Use language similar to the following: "I am calling to discuss your SBA disaster loan application. This will help me process your application. However, no decision has been reached yet and nothing I say should be interpreted as a likely favorable or unfavorable decision."
 - (3) Always inform applicants that anything said during the course of loan processing is not official notification of approval or disapproval of their loan request and no Agency decision is final until they receive it in writing.
- d. Requesting Reverification.
 - (1) If an applicant does not agree with the LV's damage estimate, you must advise applicants that requests for reverification must:

- (a) Be in writing; and
 - (b) Be accompanied by documentation that shows the cost to restore the property to predisaster condition is more than the amount in the LV's report.
- (2) You should discourage (delay) reverification requests until after you determine the likelihood of loan approval. If repayment ability is not evident using the original LV's report, the outcome cannot change unless the reverification:
- (a) Results in refinancing eligibility; and
 - (b) This additional eligibility is sufficient to overcome a lack of repayment ability. (If decline was indicated for other than repayment reasons, a reverification could not alter the outcome.)

72. APPLICANT'S REPRESENTATIVE

The policy of SBA is to try to ensure that those who participate in its programs are not subject to fraud, dishonesty, or unnecessary or inappropriate representation that creates excessive fees or costs.

SBA Forms 5 and 5C require a listing of attorneys, accountants, appraisers, and other representatives an applicant retains, and any present or future compensation for their services. You must not discuss the case with anyone whose name does not appear on the application unless the borrower authorizes us, in writing, to do so.

- a. We do not require applicants to engage the services of any professional to file an application. When an applicant engages a representative, SBA will review the fees charged only in connection with preparing the application and assisting the applicant to obtain a loan.

Some applicants may report fees paid for services not directly related to the application process, such as preparation of tax returns and regular accounting fees. These fees should not be included in the reasonability assessment.

- (1) For a simple application, fees generally should not be more than:

- (a) **\$500** for disaster home loans; and
- (b) **\$2,500** for disaster business loans.

- (2) **If the representative's fees exceed this amount, you should:**

- (a) Advise the applicant that a signed Compensation Agreement (SBA Form 159D) **should** be provided by the representative, and provide a copy to the applicant, using a **7-day letter**. (SBA Form 1643 **or 1643Z at screening in the field if DCMS is unavailable**);
- (b) Forward the fee information to the ADLP or designee; and
- (c) Continue to process the case file.

(3) The ADLP or designee, in consultation as needed with the Center Counsel or designee, should review the fee information to determine whether the fees charged bear a necessary and reasonable relationship to services actually performed or expenses actually incurred, in accordance with 13 CFR §103 and SOP 50 30 6, appendix 14. The ADLP may request that the representative provide an itemization or justification of services provided or expenses incurred. If fees are determined to be unreasonable, and cannot or will not be justified by the representative, the ADLP or Center Counsel should advise the CD/PDC who will make the final determination. Any further action should be coordinated with ODA.

b. Representative Index (Appendix 14).

Enter the appropriate information for all representatives listed on the application in the "Representative Index" section on the Interview Data tab.

- (1) You must advise the ADLP immediately if, during processing, you learn that an applicant's representative:
 - (a) Has stated that SBA approval is contingent upon professional preparation or the application; or
 - (b) Has stated that he or she is able to get the disaster loans approved; or
 - (c) Generally advertises that he or she gets preferential treatment from, or has special influence or contacts within SBA; or
 - (d) Has charged a fee to prepare disaster loan applications, but has refused to be named on the application; or
 - (e) Is engaged in any other improper act.
- (2) If any of the above occurs, you must provide documentation in the form of copies of advertisements, names of people who informed us of the circumstances, etc., to the ADLP or Center Counsel so they can determine if 13 CFR §103.4 was violated. If necessary, they must notify the CD/PDC of the facts.
- (3) The CD/PDC will conduct a preliminary inquiry and determine if a violation occurred. If the facts warrant, the CD/PDC will refer the matter to OIG, along with all necessary documents and a recommendation for action.

73. DUPLICATION OF BENEFITS (DOB)

To avoid DOBs for approved loans, every LAA stipulates borrowers must promptly notify and pay to SBA any insurance proceeds or other compensation which exceeds the amount taken into consideration when we determined eligibility.

a. Deducting Compensation.

You must deduct any type of compensation specified in paragraph 44. This applies to amounts known at the time of processing, even if not actually received.

- (1) Duplication can also occur when any agency provides assistance for a loss which is the primary responsibility of another agency to provide. Each agency should, in turn, offer and be responsible for delivering its program(s) without concern about duplication with a program later in the sequence.
- (2) The sequence list determines the order in which a program should provide assistance and what other resources it must consider before it does so. Under a Presidential declaration, generally, the delivery sequence is:
 - (a) Volunteer agencies' emergency assistance programs (ARC, Salvation Army, etc.);
 - (b) **FEMA Home Repair and Replacement;**
 - (c) Hazard insurance (including flood insurance);
 - (d) SBA and Department of Agriculture disaster loans;
 - (e) FEMA IHP assistance;
 - (f) **Other federal, state and local government agencies (e.g., Housing and Urban Development (HUD) CDBG grants);**
 - (g) Volunteer agencies' additional assistance programs (ARC grants or other free assistance); and
 - (h) The Cora Brown Fund (administered by FEMA).
- (3) Occasionally, FEMA or similar agencies may make an out-of-sequence advance to a disaster victim financially able to borrow full SBA disaster loan eligibility. **If this happens:**
 - (a) FEMA will notify us of the out-of-sequence assistance by updating the DOB information it provides.
 - (b) The loan proceeds must repay FEMA for that portion of the loan made for any eligible purpose(s). If we learn of the assistance after approval but before full disbursement, we must repay FEMA via loan modification action.

NOTE: **You must never use RE loan proceeds to repay an IHP award for personal property losses.**

 - (c) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication.

b. Processing Procedures. (These procedures also apply to reaccepted applications).

- (1) In Presidential declarations, do the following.
 - (a) **Check** all original home and private nonprofit (PNP) business loan applications during processing for possible DOBs. The DOB **information** in the case file lists the amount of any **home repair** award for a home loan and grant assistance for emergency protective measures for a PNP business loan.

- (b) **Check** the DOB information provided by FEMA before recommending approval upon reconsideration. This avoids duplicating possible assistance.
 - (c) **Consider** any insurance or other compensation award (e.g., FEMA Home Repair) made after loan approval of up to \$500 for each award and \$1,000 cumulative as a *de minimis* amount for duplication of benefits purposes **which** eliminates the need for a loan modification. The only documentation required will be a comment in the chron log of the *de minimis* amount.
- (2) In SBA declarations, **do the following.**
- (a) **Check to see if the ARC or any other assistance program has been activated, before recommending approval and find out if any assistance was awarded.**
 - (b) **Consider any insurance or other compensation award (e.g., ARC) made after loan approval of up to \$500 for each award and \$1,000 cumulative as a *de minimis* amount for duplication of benefits purposes which eliminates the need for a loan modification. The only documentation required will be a comment in the chron log of the *de minimis* amount.**
- (3) You must check with the applicant, the mortgagee, or mortgage servicing agent to verify whether hazard insurance **and/or flood insurance (if applicable)** was in force if there is not proof in the case file. You must contact the agent and request a breakdown of insurance proceeds (settlement sheet or adjuster's proof of loss) the applicant has either received or agreed to accept. The breakdown should specify amounts for:
- (a) Damage to real, personal, or business property;
 - (b) Any additional living expenses; and
 - (c) Any business interruption and extra business expense.
- c. Do not deduct Federal Income Tax benefits from verified losses. We do not consider this a DOB even though IRS regulations permit victims to file for a refund of part or all of Federal income taxes paid in certain prior years or to carry forward any unused portion to reduce future years' Federal tax liabilities.

74. CHARACTER DETERMINATION: POLICY AND PROCEDURE

It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. If any adverse information develops concerning the character or background of a disaster loan applicant, as disclosed on SBA Form 912, "Statement of Personal History," or from any other source, you must follow the procedures specified in this paragraph. In some cases, you must obtain ODA clearance before a loan may be approved. The response to a specific question on the Forms **5 and 5C** determines whether an SBA Form 912 is needed. When received, we must forward all SBA Form 912s to the Office of Security Operations (OSO) in OIG.

If the applicant did not respond to the applicable question on the Form 5, you must contact the applicant by phone to ascertain the answer to the question and notate the chron log accordingly. To do so, simply read the question as it appears on the application, as follows:

“Is the applicant or any of the individuals listed in item 19 currently, or have they ever been: (a) under indictment, on parole or probation; (b) charged with or arrested for any criminal offense other than a minor motor vehicle violation, including offenses which have been dismissed, discharged, or not prosecuted; or (c) convicted, placed on pretrial diversion, or placed on any form of probation, including adjudication withheld pending probation, for any criminal offense other than a minor motor vehicle violation?”

NOTE: The question on the home application (SBA Form 5C) as stated does not require a yes or no answer. As such, if there is no response indicated, the determination is that the applicant has answered the question.

- a. Fingerprint Policy and Procedure. If we receive an SBA Form 912 with an affirmative answer to questions 7, 8, or 9, we must determine if a fingerprint sample (obtained on FBI Form FD-258, "Fingerprint Card") is necessary. The procedure is as follows.
- (1) CD/PDC, DCD/PDC, ADLP or their designees determine if fingerprints are needed.
 - (2) We base the fingerprint decision on whether the criminal activity disclosed on SBA Form 912 is both minor in nature and was committed more than 10 years ago. In deciding whether an offense is minor in nature, consultation with Center Counsel may be helpful and appropriate.
 - (a) If we require fingerprints:
 - (i) Obtain the fingerprint samples on FBI Form FD-258;
 - (ii) Do not forward SBA Form 912 until the applicant has returned the completed fingerprint card;
 - (iii) Make the following notation on SBA Form 912: "912 to OSO on (date);"
 - (iv) Scan documents; and
 - (v) Forward to OSO.
 - (b) If the deciding official waives the fingerprints, he/she must:
 - (i) Record the following (or similar) language in the chron log of the case file: "SBA 912 exception for (person's name) is not considered serious. Therefore, fingerprints are not required. Authority is hereby given to process this application to conclusion;"

(ii) Make and initial the following notations on SBA Form 912: "Fingerprints waived on (date)," and "SBA Form 912 to OSO on (date)."

(iii) Scan documents; and

(iv) Forward to OSO.

b. Persons Convicted of a Felony During and in Connection with a Riot or Civil Disorder or Other Declared Disaster.

- (1) By statute, persons convicted during the past year of a felony during and in connection with a riot or civil disorder are not eligible (1106(e) of P.L. 90-448). You must decline their application for policy reasons, using coded reason 43.
- (2) If the conviction was more than one year ago, these applicants must complete an SBA Form 912 and an FBI FD-258. We cannot approve their application until we obtain ODA clearance.

c. Criminal Arrests/Indictments/Convictions/Parole/Probation.

- (1) General Policy - Home Loan Applicants. We can process, approve, and disburse unless we learn that the applicant:
 - (a) Has been arrested for a criminal offense;
 - (b) Is presently under indictment;
 - (c) Has been convicted of a criminal offense; or
 - (d) Is presently on parole or probation.
- (2) Exceptions to the General Policy. If any of the above exceptions apply, you must follow this procedure.
 - (a) If recommending decline or withdrawal (for other than character reasons), the decline (coded reason 60d) or withdrawal (coded reason 60w) letter must include the appropriate decline/withdrawal language and:
 - (i) State "The character element of SBA's loan consideration procedure has not been resolved;" and
 - (ii) Require the submission of an SBA Form 912 (and possibly an FBI FD-258) with any reconsideration/reacceptance request.
 - (b) If recommending approval, you must require the applicant to submit an SBA Form 912, an explanation of the offense, and possibly an FBI FD-258. When received, a deciding official will review the information. You then proceed as follows:
 - (i) If fingerprints are waived [see a.(2)(b) above], we can approve the application, after appropriately noting SBA Form 912 and forwarding it to OSO; or

- (ii) If an FBI FD-258 is necessary, you must withdraw the application (coded reason 60a). You cannot take any action until we obtain specific clearance from ODA.
- (c) When ODA completes its character evaluation and notifies the PDC of the decision, the ADLP will ensure:
 - (i) If the applicant is found eligible, to reactivate the application and complete processing; or
 - (ii) If not eligible, to reactivate and decline the application for policy reasons (coded reason 43).
- (d) Generally, we do not approve loans to applicants presently on parole or probation following conviction of a serious offense. However, ODA will consider approving home applications provided the applicant provides:
 - (i) Written endorsement of the applicant's good character from a reputable third party; and
 - (ii) A guarantor acceptable to SBA.

ODA's notice to the PDC will specify whether it will grant a waiver upon submission of a satisfactory character endorsement and guarantor.
- (3) General Policy - Business Loan Applicants. We do not require an SBA Form 912 from anyone connected with the applicant if the personal history question on the Form 5 is answered "NO." Officers and directors (of for-profit or nonprofit applicants) do not have to answer this question unless they are principals.
- (4) Exception to the General Policy. If this question is answered "YES," you must follow this procedure.
 - (a) If recommending decline or withdrawal (for other than character reasons), the decline (coded reason 60d) or withdrawal (coded reason 60w) letter must include the appropriate decline/withdrawal language and:
 - (i) State "The character element of SBA's loan consideration procedure has not been resolved;" and
 - (ii) Require the submission of an SBA Form 912 (and possibly an FBI FD-258) with any reconsideration/reacceptance request.
 - (b) If recommending approval, you must require the applicant to submit an SBA Form 912, an explanation of the offense, and possibly an FBI FD-258. When received, a deciding official will review the information. You then proceed as follows:
 - (i) If fingerprints are waived [see 74.a.(2)(b) above], we can approve the application, after appropriately noting SBA Form 912 and forwarding it to OSO; or

- (ii) If an FBI FD-258 is necessary, you must withdraw the application (coded reason 60a). You cannot take any action until or unless you obtain specific clearance from ODA.
- (c) When ODA completes its character evaluation and notifies the PDC of the decision, the ADLP will:
 - (i) If the applicant is found eligible, reactivate the application and complete processing; or
 - (ii) If not eligible, reactivate and decline the application for policy reasons (coded reason 43).
- (d) Generally, we do not approve loans if the applicant or a business principal is presently on parole or probation following conviction of a serious offense. **However, ODA will consider applications from:**
 - (i) Sole proprietors, provided the applicant provides written endorsement of his/her good character from a reputable third party and a guarantor acceptable to SBA; and
 - (ii) Partnerships and corporations, where the apparent bar to eligibility was committed independently of any official act for the business and the individual will divest all direct and indirect interest in the business.

75. EQUAL CREDIT OPPORTUNITY ACT (ECOA)

The ECOA and the laws of each State affect who SBA may or should require to sign disaster Notes, collateral documents, and guarantees. Center Counsel must advise of the proper procedures and requirements for each State. The following is a general explanation of the ECOA (Title VII of the Consumer Credit Protection Act). References to "Regulation B" in this chapter are references to Regulation B issued by the Board of Governors of the Federal Reserve System which supplements ECOA.

- a. The ECOA prohibits discrimination on the basis of race, color, sex, marital status, religion, national origin, age, receipt of income from a public assistance program, and the exercise in good faith of rights under the Consumer Credit Protection Act. It applies to all loan programs covered in this SOP. For business loan applications it covers, **sole** proprietors, partners, corporate officers, directors, and stockholders.
- b. We cannot ask a spouse to sign a Note, guarantee, or other document solely because of marital status. However, when we rely on a spouse's income to establish repayment ability or when State law makes it necessary, we can require the spouse to sign the Note. Also, a spouse can be asked to sign all collateral documents covering property in both names which is required to perfect SBA's collateral.

NOTE: With respect to community property states, see opinion of General Counsel dated July 25, 1994, in appendix 23.

- c. Because we cannot request financial information about a spouse, you cannot ask whether a spouse is working and can contribute to the family income. Therefore, you must make a reasonable judgment on the amount **an owner** must draw to support their dependents. If the remaining income is inadequate to repay, you must decline the loan. You can consider spousal income only when the applicant (principal) and the spouse volunteer this information. When we rely on a spouse's income for repayment ability, we may ask reasonable questions to determine the probable continuity.

76. CREDIT INFORMATION

The overall credit of an applicant, including affiliates, must be satisfactory prior to recommending a loan approval. To determine satisfactory or unsatisfactory credit, you must have a thorough understanding of all variables that comprise overall credit history.

a. Credit Bureau Reports (CBR).

- (1) General Requirement. All disaster loans must have a CBR. If none is available from an SBA contractor, we require a report from another reputable credit bureau or direct verification of credit references and other credit sources.
- (2) Direct Credit Checks. In some outlying areas, credit bureaus may have only minimal (if any) information on individuals and businesses. If CBRs are not informative or available, you must perform direct credit checks with banks and other sources.
- (3) Who to Check.
 - (a) All applicants appearing on a home loan application.
 - (b) All business principals.
 - (c) All businesses.

NOTE: We do not permit substituting credit checks on the owners of a business in lieu of checks on the business itself.

b. Credit Information From Banks or Other Lenders.

- (1) Refinancing. Whenever a disaster loan involves refinancing, you must request specific credit information from the lien holder. You should initially attempt to obtain this information by telephone. If the lien holder(s) will not provide the information on the phone, use the credit inquiry letter, **SBA Form 143**, for this purpose. This does not apply to the refunding of interim loans (see paragraph 36).
- (2) You must include the following paragraph in every SBA letter which requests credit information from a financial institution:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-630. Pursuant to Section 113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

- c. Business Credit Reports. All business and EIDL applications, including affiliates, require a business credit report from Dun and Bradstreet (D&B) or a similar commercial credit reporting company with the exception of sole proprietorships. **For sole proprietorships,** the CBRs of the owners are usually sufficient. Although discretion to order D&B reports may be exercised when deemed necessary, D&B reports should rarely be ordered on sole proprietorships.
- d. Discussion of Credit Report Content with Applicants. You can discuss CBR items which are not of public record, provided you do so in a responsible manner. However, your discussion should only address those derogatory items and other accounts to the degree necessary to process the application. You must record all discussions in detail in the chron log.

Any consumer loan applicant (home or personal property) who asks for a copy of their credit report will receive all credit reports on them in the case file. The Privacy Act requires that Federal agencies provide requestors with their credit reports if those reports are kept in a system of records. Any business loan applicant who asks for a copy of their credit report will be treated as a FOIA requestor, and will receive that report unless it is exempt from disclosure under FOIA.

- e. Poor Credit History. You must give applicants with poor credit history every opportunity to provide explanations before you reach a conclusion about their overall credit worthiness. Generally, a history that consists of minor, isolated instances of poor credit or late payments is acceptable provided that:
- (1) The applicant explains the lapse; and
 - (2) The applicant has other accounts with "as agreed" payment records. AN APPLICANT'S POOR CREDIT HISTORY CANNOT BE OVERCOME BY THE CREDIT HISTORY OF A GUARANTOR.
 - (3) **You cannot recommend approval if you determine that credit history is unsatisfactory.**
- f. Lack of Credit History. You must explore and identify the reasons for a lack of credit history when making credit judgments. You cannot simply judge applicants without credit cards, charge accounts, or other forms of electronic credit histories to have satisfactory or unsatisfactory credit. However, if an applicant can demonstrate (preferably over a minimum period of 2 years) their ability to make regular, noncredit payments (e.g., utilities, rent, insurance, medical or dental bills, etc.) in an as agreed manner, you can make a determination of satisfactory credit. You must justify these decisions in your case file.
- g. Prior or Existing SBA Loan History. If the application indicates previous or existing SBA loan experience, or if you discover SBA financing through other sources such as a Portfolio Management Query Display (PMQD), you must determine if the performance is or was satisfactory.
- (1) You do not need to call the servicing office if:

- (a) The PMQD 09, 11, 26, and CABW 12 reflect no history of delinquency (delinquency being a payment more than 30 days past due), or returned (NSF) checks; and
 - (b) There have been no deferments; and
 - (c) The damaged or collateral property is not in an SFHA; or
 - (d) The loan has been sold to a third party.
- (2) If the loan has been sold to a third party, the PMQD will not reflect the loan performance after the date of sale. In these situations, you must document the following in the case file:
- (a) Indicate that the loan has been sold including the date of the sale (obtained from the PMQD 02);
 - (b) Address the pre-sale history;
 - (c) Address the post-sale payment history based on CBR, 5C, or other case file information, if circumstances warrant; and
 - (d) Conformance with any insurance or other special conditions. You should determine these conditions using available case file information.
- h. Bankruptcy or Reorganization. Applicants (home or business) who have previously filed for bankruptcy, or are currently in the process of reorganization are not automatically precluded from receiving assistance. The type of bankruptcy filing, when it occurred, the details of the reorganization plan, the plan's success or failure, and subsequent disposition are just some of the factors, which bear on the overall evaluation.
- (1) Chapter 7 Bankruptcy (Liquidation). We do not automatically disqualify applicants discharged in prior Chapter 7 bankruptcies. The effect on the credit decision generally depends on the circumstances. The older the discharge, the less effect it may have on the credit decision. You can recommend approval for applicants discharged in bankruptcy within the last two years if you document the following in the case file:
- (a) The bankruptcy was caused by circumstances beyond the applicant's control (e.g., unemployment, prolonged illness, medical bills not covered by insurance, protracted labor strikes, disaster related, etc.) as opposed to bankruptcy caused by the applicant's actions (e.g., misconduct, avoidance of creditors, careless overextension of debt, etc.); and
 - (b) The applicant's credit history since the bankruptcy is satisfactory; and
 - (c) The applicant has repayment ability despite the circumstances surrounding the bankruptcy. Use caution in cases of self-employed applicants whose bankruptcy occurred during previous self-employment, or applicants whose current employment is not stable.

(2) Chapter 13 Reorganization (Wage Earner's Plan).

- (a) A Wage Earner's Plan (WEP) applies to individuals and indicates some effort to pay certain creditors. A WEP can make it possible to settle debts for only a portion of what is owed, while retaining personal assets. The maximum term permitted for a WEP is five years and once approved, the wage earner can incur additional debt only with permission from the court. Generally, the court will not approve additional credit unless the purpose is vital to the well being of the wage earner or family members.
- (b) You can recommend approval if:
 - (i) The applicant has made all payments on the WEP in a satisfactory manner, based on direct contact with the Trustee, online contract information sources, or other sources; and
 - (ii) Total debt service is reasonable, and,
 - (iii) A written approval from Bankruptcy Trustee/Court is a stipulation of the LAA.

NOTE: The following verbiage must be **included** in the LAA:

OC-19 - "Prior to disbursement of any loan funds, Borrower will provide written authorization, satisfactory to SBA, from the Bankruptcy Trustee/Court to incur the debt obligation created by this loan."

- (3) Business Reorganization (Chapter 11). Businesses may be in one of many different stages of the Chapter 11 filing procedure. This can impact our ability to approve, or even process the application. Therefore, you must discuss these cases with counsel before you begin and follow their advice for any legal impact to the validity of the plan. You should discuss:
 - (a) Whether a plan was filed with the Bankruptcy Court;
 - (b) If the Court accepted the plan;
 - (c) Whether the business is following the plan;
 - (d) How much time remains before the business will emerge from the plan; and
 - (e) If the Court will consider allowing the applicant to incur additional debt outside of the plan.
- i. Prior SBA Loan Discharged in Bankruptcy. Applicants who had a prior SBA loan discharged in bankruptcy are not automatically barred from receiving disaster loan assistance.
- j. Delinquency on Federal Obligations. "Federal obligations" include, but are not limited to: any direct Federal loans, contracts, and/or grants; student loans; and debts owed to the IRS, etc. Generally, we will not approve loans to applicants who are delinquent on any Federal debt, or have a judgment lien against their property, unless one of the following applies.

- (1) If a Federal obligation is delinquent, but no judgment lien has been filed, we can approve a loan only if the Federal agency involved provides evidence that the debt is no longer delinquent and there is reasonable assurance that the applicant will comply with the terms of the loan agreement.
- (2) If a Federal obligation is delinquent and a judgment lien has been filed, we can approve a loan only under the following circumstances.
 - (a) When the delinquency on a debt resulting in a lien is caused by the disaster itself, we have the authority to waive the restriction. This applies whether the debt pre-existed the disaster, or was the result of the disaster. Because we do not provide funds to pay another Federal creditor, you must make workout arrangements in conjunction with any approval recommendation.
 - (b) A debtor who has a judgment lien and made arrangements before the disaster to satisfy the debt, and whose adherence to those arrangements before the disaster was satisfactory is eligible. We must obtain concurrence from the creditor agency that the predisaster agreement was being satisfactorily honored.

The ADLP or higher must approve these exceptions or waivers.

- k. Lawsuits. You must obtain complete details of any pending lawsuits. You must submit the information to counsel for an opinion regarding the existing or potential impact to approval.
77. CONSUMER CREDIT PROTECTION ACT (REGULATION Z)
- a. Whenever we decline a loan in whole or in part because of information contained in a credit report, our decline letter must also include the name and address of the credit reporting agency.
 - b. Whenever we decline a loan in whole or in part because of information obtained from other than a credit reporting agency, our decline letter must advise the applicant they may submit a written request for disclosure of the nature, not the source, of the information upon which we based the decline action. They must do this within 60 days of notification.
 - (1) This applies if the decline concerned the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
 - (2) While the law does not require disclosure to an applicant of the SOURCE of the information received in a direct inquiry, the intent of the law is that we MUST give the applicant enough facts to be able to refute or challenge the accuracy of the information.

78. USE OF APPLICANT'S AND/OR OWNER'S ASSETS AND CREDIT

- a. We do not require the use of the applicant's or owner's assets and credit if a physical loan (including refinancing) does not exceed:
 - (1) The administrative limits for a home loan; or
 - (2) The legislative limit for the combined total of all loans to a business applicant and its affiliates.
- b. We may require the use of the applicant's or owner's assets and credit if the loan:
 - (1) Is an EIDL; or
 - (2) Is for more than \$1,500,000 (MSE).

79. COMPANION LOANS

Because the terms applicable to disaster home and business loans vary, we must process them separately. However, the same LO should process companion case files when possible.

- a. We must make separate loans to:
 - (1) An applicant who suffers damage to both their primary home and business;
 - (2) Affiliates of business loan applicants who file for physical damage and/or economic injury.
- b. Exception to the Rule. We can consolidate applications from business concerns with identical ownership into a single application number and case file (see subparagraph 82.c.).
- c. Associated Case File(s). Is a case file(s) for the same applicant from a separate declaration.

80. BUSINESS/EIDL (B/E) LOANS

When the applicant applies for physical losses, we automatically include an EIDL (except for nonprofit organizations). This was formally known as a combined loan.

- a. Guidelines for Processing a B/E Loan - The following provides guidelines for processing under these criteria.
 - (1) B/E loans are restricted to business physical and economic injury for the same legal entity.
 - (2) The results of combining the loans are:
 - (a) One set of documents
 - (b) One case file
 - (c) Borrower gets one statement and makes one payment

b. Processing Issues.

- (1) When the physical loan is declined and there was no specific request for the EIDL, withdraw the EIDL, code 56.
- (2) When the applicant has requested both loans and we decline or withdraw them, both actions should be addressed to the applicant.
- (3) For EIDL funds, the Use of Proceeds will reflect UP-64 with custom verbiage for month and year. Do not use UP-60. In Phase I analysis, you can also use UP-62 for Notes Payable.
- (4) If you are processing a physical business loan and a decline becomes apparent for credit-related reasons, you do not have to fully process the companion EIDL. In these cases, the decline letter for the physical loan must state: "Due to the nature of this decline we have not fully analyzed your economic injury. Should you seek reconsideration, we will then determine your eligibility for economic injury disaster loan assistance."

c. Collateral Issues.

- (1) There is no change to our standard collateral requirements (see paragraph 48) with a B/E loan. The loan is unsecured when the physical loan amount does not exceed \$10,000 or the EIDL amount does not exceed \$5,000. You do not aggregate the physical and EIDL loan amounts to determine if collateral is required. For example, a B/E loan for \$10,000 (\$6500 physical and \$3,500 EIDL) does not require collateral but a B/E loan of \$10,000 (\$3,500 physical and \$6,500 EIDL) does requires collateral).
- (2) If the business physical loan is a decline or withdrawal, and only the EIDL is approved, the unsecured threshold is \$5,000.
- (3) If the EIDL is declined/withdrawn, and only the physical loan is approved, the unsecured threshold is \$10,000.

81. TELEPHONE CONTACT UPON COMPLETION OF PROCESSING

After completing the analysis you must inform the applicant of the possible action. Advise them that NO decision is final until they receive it in writing. You are authorized to discuss the proposed terms or reasons for the proposed action only with the individuals named on the application, or their named representatives. Under no circumstances are you permitted to leave this information on an answering machine or with any unauthorized third party. If you cannot reach the applicant by phone, document your attempt(s) to contact in the chron log and forward the case file for review.

a. Approval Recommendation.

- (1) You must inform the applicant of all proposed terms and conditions.
 - (a) Terms include the loan amount, interest rate, installment payment, loan maturity, and initial due date.

- (b) Conditions include, at a minimum: collateral, guarantors, use of proceeds, insurance requirements/assignments, loan closing deadline, disbursement period, etc.
- (2) You must also ask whether the applicant has any questions. This practice avoids applicant confusion and maintains Agency credibility. Exercise care when responding to questions concerning areas with which you are not completely familiar. In these cases, tell the applicant you will seek supervisory guidance and promptly call them back.
- (3) If an approval recommendation is contingent upon a "conditional commitment letter" (CCL), you must inform the applicant of required documentation. Also, advise the applicant that a representative from the Legal Department will call to follow up (see paragraphs 87.b., 88, and 89.b. for procedures).
- b. Decline Recommendation. You must inform the applicant of the reason(s) for the proposed decline action and advise them of their right to request reconsideration.
- c. Withdrawal Recommendation. You must inform the applicant of the reasons for the proposed withdrawal action and advise them of their right to request reacceptance.

82. WITHDRAWAL OF APPLICATIONS

Withdrawing an application, either at the applicant's request or by SBA does not constitute a processing decision. However, the rules relating to reacceptance requests apply (see chapter 9).

- a. At Applicant's Request. We can withdraw an application at any time during processing if we receive a written or oral request. When an applicant orally requests to withdraw the application during processing, you must note the conversation in the chron log. Our withdrawal letter must reference the date of the conversation or written request.
- b. By SBA. We must withdraw applications which we cannot process to a decision because of a lack of (or incomplete) response to a Loan Processing 7-day letter or a Loss Verification 5-day letter (unable to verify). Our withdrawal letter must specify what information is needed and also state the reacceptance deadline.

NOTE: Reaccepted withdrawn files that do not have an original verification should be forwarded to the FIT for CONUS inspections or to the appropriate FOC for OCONUS inspections.

- c. Case File Consolidation. You must discuss the option of case file consolidation if:
 - (1) An applicant owns 100 percent of two or more businesses which were damaged by the disaster; and
 - (2) Completes a separate application for each business.
 Upon the applicant's agreement, you may combine the applications into one case file and withdraw the other(s).
- d. Appendix 3 lists the coded reasons for withdrawal.

83. DECLINE OF APPLICATIONS

If you recommend decline, you **should** address ALL decline reasons and you must indicate each applicable code in the **decision tab**. Our decline letter (SBA Form **2157 H, B, AH, AB, R**) will contain and define each of the decline reasons, and must advise the applicant of their reconsideration rights (see chapter 9 and appendix 4). You must follow the standard decline language used in appendix 4 for all original decline letters. In the event a loan officer feels that the standard decline language is not appropriate, a custom letter is acceptable; however, this should be the exception and used only in rare cases.

84. DOCUMENTING REPAYMENT ABILITY

Cash flow, not collateral, is the basis for establishing repayment ability. We must have reasonable assurance of an applicant's ability to repay any proposed loan. **For home loans using standard processing procedures, we determine this by the FDM described in appendix 26.** For business loans, we determine repayment ability by the results of the financial analysis performed on the business.

85. LIMITED REPAYMENT ABILITY/LOSS IN EXCESS OF LENDING LIMITS

Your case file must always explain how applicants who lack the ability to repay the full amount of disaster loan eligibility, or applicants with losses in excess of the lending limits will effect viable restoration. In some instances, a disaster victim's recovery could involve SBA, FEMA, the State grant, and the ARC or some other organization, such as Mennonite Disaster Services.

- a. When applicants sustain uninsured losses in excess of our lending limits, you must determine if the applicant can complete restoration with the SBA loan, and any other Federal, State, or local programs. If they cannot, you must determine if:
 - (1) The amount needed to supplement the SBA loan is available to the applicant on reasonable terms; and
 - (2) The applicant can repay all obligations from present and future income.
- b. Under a Presidential declaration, joint assistance involving other relief agencies may be necessary to restore homeowner disaster victims with the ability to repay only part of the verified damages. You should attempt to establish some plan whereby SBA alone, or in conjunction with other disaster relief organizations, can restore all or part of the real estate and the IHP program can be used to complete and/or adequately furnish the residence to make it livable.
- c. Under an SBA declaration, joint assistance with the ARC or other relief agencies may be possible.
- d. If a substantial shortfall exists, you must consult with **the PDC Loss Verification Department** to determine if a lesser loan amount will permit the victim to restore reasonable habitability.

86. LEGAL NAME OF A BUSINESS LOAN APPLICANT

For each business or EIDL application which involves a legal entity (other than a sole proprietorship) as an applicant or guarantor, Loan Processing will be responsible for contacting the appropriate State Secretary of State (orally or electronically) to establish the correct legal name of the entity and whether the entity is in good standing with the State and entering this information in the case file or the chron log. This documentation will eliminate the need to obtain a Certificate of Good Standing. For those states that will not provide confirmation that the entity is in good standing (orally or electronically), the loan officer will condition the loan or request the Certificate of Good Standing through a custom conditional commitment letter.

87. LOAN AUTHORIZATION AND AGREEMENT (LAA)

- a. We issue all SBA disaster loan commitments in the form of a written LAA using SBA Form 1391. A disaster loan borrower agrees to the various terms and conditions of the loan by signing this written LAA. The general form has six variations: unsecured home, business, and EIDL; and secured home, business, and EIDL.
- b. A recommendation to approve a loan is not final until the SLO approves the case file and the CCL. Counsel reviews all case files for secured loans for sufficiency of collateral instruments and other legal concerns. Generally, counsel does not review unsecured LAAs.
- c. The LAA contains all terms and conditions applicable to the loan. You must not impose conditions other than as written in the LAA. Borrowers are not legally bound by any verbal term or condition.
- d. In completing the case file, you must review all available standard and optional stipulations before using any custom stipulations. You only use custom stipulations when no standard or optional stipulation will suffice.
- e. Custom stipulations must follow the "Borrower will" format used in all standard and optional text. Center Counsel or designee must review them during the legal review of the case file for clarity, legal sufficiency, and conformance with format standards.

NOTE: If any custom stipulation is used more than 10 times a year it must be:

- (1) Submitted to ODA through Center Counsel for adoption as a standard or optional stipulation; and
 - (2) Cleared in accordance with statutory requirements.
- f. The SLO is responsible for assuring that all stipulations are consistent with the case file, and for avoiding nonessential use of custom stipulations.
 - g. SBA requires loan recipients of a single loan in excess of \$150,000 to execute a certification and disclosure regarding lobbying activities. In order to comply, we must include an OC-15 stipulation, Disclosure of Lobbying Activities, in the case file. The lobbying certificate must be obtained prior to any disbursement of loan proceeds. If a borrower has two or more loans from the same disaster, we do not aggregate these loan amounts to determine the \$150,000 threshold.

88. CONDITIONAL COMMITMENT LETTER (CCL)

- a. You must prepare a CCL in cases where we did not require specific items at the time of application but need them to either confirm eligibility or facilitate the preparation of loan closing documents (LCD)s. Submit the CCL with the case file. Appendix 5 provides a detailed list of the standard items commonly needed for this purpose.
- b. Renters with only personal property damage are not required to submit evidence of occupancy with their home loan applications. Such evidence will not be required after approval if:
 - (1) The address and social security numbers contained on the FTRs and the Credit Bureau report are the same as on the application; or
 - (2) In conversations with the applicant any apparent discrepancy is resolved to your satisfaction. Information in the justification tab and the chron log should contain an explanation of the resolution; or
 - (3) Verification of occupancy is reflected on the NEMIS report.
- c. Deeds, generally establish real estate eligibility; however, in the case of an unsecured loan you must use one of the following in their listed order to verify real estate eligibility when legal ownership documents are not already in the case file.
 - (1) FEMA Report (Ownership verification).
 - (2) ChoicePoint or similar reliable service.
 - (3) One of the following documents: Title or current registration (Manufactured Home); Official Record – Deed, Recorded land installment contract, will, court records; Affidavit from county official; Property tax records; Insurance policy forms; Contacting the mortgage company.
- d. For secured loans in which eligibility can be established using the documentation stated in subparagraph 88.c., a CCL is not necessary. In this situation, an OC-13 stipulation should be added to the loan authorization requesting a complete, legible copy of the recorded deed(s).
- e. The Legal Department may establish a relationship with a local title company to obtain ownership deeds. In areas where this service is available, you should prepare a Vesting Deed Request (VDR) to obtain this information. This procedure is valid in these areas regardless of loan amount and the stipulation stated in subparagraph 88.d. is not necessary.

89. LOAN APPROVAL (OBLIGATING)

We document loan approval (obligating) by entry into the loan accounting system. This action obligates funds for the approved loan. No loan is officially approved from a legal or work measurement perspective until loan obligating is complete except for MREIDL (see subparagraph 46.d.(2)). When the accounting system establishes the loan account

and obligates the funds for the loan, we get confirmation in the form of a loan number, which is different from the DCMS application number. Loan numbers are unique to each loan and remain permanently assigned to the case file. They are ten digits, contain a prefix for added identification, and are printed on the loan closing documents (LAA, Note, etc.) The prefix to the ten digit loan number is DLH for disaster home loans, DLB for disaster business loans (including B/E loans), and EIDL for economic injury disaster loans only.

- a. Post Obligating Procedure. After obligating, all case files are forwarded to the Legal Department. If the case file has a CCL, the Legal Department will forward it to the borrower.
- b. Commitments Outstanding. When a case file with a CCL is received in the Legal Department, a Legal Department representative must:
 - (1) Telephone the borrower;
 - (2) Reiterate the terms and conditions of their loan;
 - (3) Explain that we need additional documentation before we can prepare their loan closing documents;
 - (4) Specifically describe the required documents;
 - (5) Inform the borrower of the 21-day deadline; and
 - (6) Promptly mail the CCL.

To expedite the process, you may encourage prospective borrowers to fax the needed documents to SBA. However, when offering to accept faxed documentation, you should be careful to display a helpful attitude rather than risk appearing demanding and overbearing.

- c. There are three possible outcomes from the commitments outstanding stage, and each requires a different course of action.
 - (1) If we receive the required documents, following Legal Department review the case file is forwarded to approval documents for preparation of loan closing documents.
 - (2) If we receive documents, which are incomplete and/or different from those specified, the Legal Department must attempt to resolve the differences. However, Loan Processing must resolve issues regarding eligibility and credit concerns. This includes doing a loan modification if appropriate.
 - (3) If we do not receive the documents by the deadline (including any grace period established by the PDC), the case file is forwarded to loan modification for possible cancellation.

90. NOTIFICATION TO BORROWER OF LOAN APPROVAL

We must notify the applicant in writing within three days of completion of obligating.

- a. As a general rule, we mail all approval and closing documents together. This includes the approval notification letter, the LAA, Promissory Note, Truth in Lending Disclosure Notice, The Notice of Right to Cancel, any security instruments, all other closing documents, and closing instructions.

- b. Exceptions Should be Rare. When workloads require departure from the general rule, we will send an approval notification letter promptly after obligating. The letter should explain that we will prepare and mail loan closing documents within a few days.
- c. The letter must inform the borrower that they must properly complete and return all closing documents to us within two months of the date of the LAA.
- d. All loan closing packages must include instructions on how to complete and return the documents, and how to obtain our assistance in closing the loan.
- e. The following statement must be included in all disaster business loan approval letters: In addition to disaster loan assistance, SBA offers business management and technical assistance services through our resource partners, the Small Business Development Center (SBDC). SBDCs provide free consultation and low cost training programs in areas such as developing a business plan, financial planning and marketing plans. SBDCs can also assist small businesses in developing information necessary for loan applications. For more information on these services, please contact your local SBA District Office for the location of the SBDC in your area.
- f. Truth in Lending Act (TILA). Regulation Z of the Federal Reserve Board (FRB) requires that SBA provide specific lending disclosures in appropriate cases. Effective with all home loan agreements and authorizations produced on or after June 15, 2000, the following documents are required in appropriate cases as specified below:
 - (1) Disclosure Notice (SBA Form 2158). The Disclosure Notice must be provided with the loan closing documents to all individual borrowers whose loans are approved primarily for personal, family or household purposes. **This excludes all loans for business purposes and all loans to non-natural persons (e.g., corporations, partnerships, etc.).** The amount of the loan and whether it is secured does not govern this requirement.
 - (2) Notice of Right to Cancel/Notice of Right to Rescind (SBA Form 2159). Two copies must be provided to each individual who is giving a security interest in their principal dwelling as part of a consumer loan transaction. This includes applicants, co-applicants, guarantors (whose guarantee is secured by an interest in their principal residence) and co-owners of the property on which the lien is secured even if they are not applicants or guarantors.
 - (3) Explanation of Notice of Right to Cancel. This page is to be attached to each Form 2159 and to be given, together with that form, to all persons who receive that form.

91. RESERVED

CHAPTER 8

DISASTER LOAN CLOSING AND DISBURSEMENT92. RESPONSIBILITY FOR CLOSING LOANS

Loans are closed in accordance with Center Counsel's guidelines and supervision.

93. OBTAINING LOAN FUNDS

- a. Once we approve a disaster loan, the borrower may obtain loan funds upon compliance with conditions/stipulations of the LAA. All named borrowers must sign and date the LAA.
- b. Limitation on Time for Return of Closing Documents (LCDs). LAAs include a provision limiting the time available to borrowers to return all closing documents. Borrowers will sign and return all closing documents to SBA within 60 calendar days of the date of the LAA.
 - (1) If the borrower does not return the LCDs within 30 days, the Legal Department must mail a reminder notice emphasizing the approaching deadline. (A phone call may also be appropriate.)
 - (2) By notifying the Borrower in writing, SBA may cancel the loan if the Borrower fails to meet this requirement. The Borrower may submit and SBA may, in its sole discretion, accept documents after 2 months of the date of the LAA.
 - (3) If we cancel the loan, we must send a letter specifying the reasons for the cancellation and citing requirements for reinstatement.
 - (4) Reinstatement of a canceled loan is subject to the provisions of paragraph 110.

94. DISBURSEMENT PERIOD

- a. Disbursement Period. All LAAs contain a standard paragraph requiring the borrower to arrange for and obtain all loan funds within 6 months from the date of the LAA. The CD/PDC may, on a disaster by disaster basis, increase the standard time frame to 12 months.
- b. Extension of Disbursement Period. Extension of the original 6 month (or in some cases the original 12 month) disbursement period is at the sole discretion of SBA.
- c. Authority for Extension. Only officials with delegated authority may approve extensions. Extensions must be documented on a loan modification.
 - (1) SLOs may approve extensions of the original 6 or 12 month disbursement period for periods up to 6 months at a time, without cumulative limitation, provided the loan is partially disbursed.

- (2) The ADLP or designee must approve extensions of the 6 or 12 month disbursement period on undisbursed loans.
- (3) An extension must be approved by an official at the same or higher level than the official who approved the loan.

95. EVIDENCE REQUIRED BEFORE DISBURSEMENT

The PDC orders all disbursements. They are sent directly from the Treasury Department to the borrower unless there is a compelling need for the PDC to issue the check. Order co-payable checks when appropriate. When there is a DOB with FEMA (UP-07) the initial loan disbursement must be for the amount of the DOB, with the initial check made co-payable to our borrower and FEMA. When the co-payable check is ordered, complete SBA Form 2212 for mailing to the borrower (a copy of the completed form should also be scanned into the case file). Do not make further disbursements until the check is endorsed by the Borrower and returned to SBA or received by FEMA.

- a. All Loans. We cannot request a disbursement until the following conditions are satisfied.
 - (1) The loan closer must review the case file to determine if the Note and other documents are properly prepared and all necessary conditions satisfied. Copies of the Note must be marked "Duplicate" in red ink prior to execution by the borrower. Typing errors, erasures, or corrections on the Note are not acceptable.
 - (2) The borrower must initial any corrections made on the documents other than the Note. The documents should be signed exactly as the names appear on them, and the closer should always advise the borrower(s) to do so. This is particularly important on documents to be filed or recorded, as an obvious discrepancy between the typed and signed name could lead to a rejection of the document by the filing office and additional expense to the borrower. Corporations must affix their seal on all copies of the Note and other documents as required by State law.
 - (3) The borrower must show identification when a check is personally delivered by a disaster assistance office employee. Preferably, the identification will be a driver's license or other document containing both picture and signature.
 - (4) You must update the DOB check to determine if all grants and/or other recoveries have been addressed. If you determine a possible DOB exists, forward the case file to loan modification to address any potential DOB. A disbursement may be made with LP concurrence where it is clear that the pending disbursement will not constitute a DOB and the appropriate loan modification will be made after the disbursement.

NOTE: Contact with the borrower remains an important issue even after the loan is approved, funded, and closed. Specifically, there must be documentation in the Comments Tab (chron log) or Justification Tab of any contact with the borrower or attempt(s) to contact the borrower prior to a disbursement which is not the result of an action by the borrower. The summary of the call should also include whether the borrower wishes to receive a disbursement at that time or if the funds are still needed.

b. Secured Loans.

- (1) We may disburse the first \$10,000 (or \$5,000 for EIDLs) upon receipt of the documents required for an unsecured loan. We may disburse additional funds when the appropriate security instruments and other closing documents have been properly completed (see paragraphs 48 and 129). For loans requiring insurance, the borrower must submit evidence of insurance coverage as required by the LAA.

NOTE: For loans above the unsecured limit and at or below the \$50,000 documentation threshold, no disbursement over the secured limit may be made until the case manager has received an electronic message from the Title Desk confirming that the documents/checks have been **received, accepted, and forwarded to the title company** for recording.

- (2) We require a title or record search for loans more than \$50,000 unless the LO justifies the requirement for loans of \$50,000 or less. These exceptions should be rare. We require a title policy **only** for loans greater than \$250,000. However, if a title policy is unavailable or if it is prohibitively expensive, **and** it is determined to be unnecessary to protect SBA, this requirement may be waived providing the exception is fully justified in the case file by both the LO and SLO during processing or by Center counsel or designee subsequently.

NOTE: We will not require a title search on the disaster damaged property when the loan officer determines that the relocation property is sufficient to fully secure the loan.

- (3) Generally, secured loans over \$50,000 are disbursed in stages that correspond with the borrower's needs and how they spent prior disbursements. We can make full, single disbursement of secured loans over \$50,000 only when:
- (a) The borrower has spent the equivalent amount of funds (excluding required prior injections) and satisfied the use of proceeds requirement; or
 - (b) Where counsel has assurance that the borrower will use the full disbursement as authorized (for example, a joint-payee check).

- (4) If the LAA did not require private interim financing, we can if necessary, make disbursements for completed work, labor used, or materials provided before project completion if we have evidence of proper use of loan proceeds.

c. Requirements for Subsequent Disbursements.

- (1) Prior to any subsequent disbursement where the aggregate amount of physical loan funds disbursed would exceed \$50,000, SBA must have evidence that funds previously disbursed have been used in accordance with the LAA. This evidence may include one or more of the following:
- (a) SBA Form 1366, "Borrower's Progress Certification."
 - (b) A joint payee check.
 - (c) Progress inspections by the Loss Verification Departments or by a government entity that, in the opinion of either Loss Verification Department, documents progress in accordance with SBA requirements.
 - (d) Escrow account, in accordance with paragraph 97.
 - (e) Lien waivers in the total amount of all labor and materials used on the RE repair/construction from all contractors, subcontractors, and independent workers involved.
 - (f) Paid invoices to support disbursements for equipment, furniture, inventory, etc.
 - (g) Other cases in which the Center Counsel determines in writing that the exception to the general rule is necessary to prevent undue hardship and the risk to the agency and the likelihood of misuse are minimal.
- (2) If the borrower requests an advance payment to purchase larger items of M&E, we can disburse against a firm quotation or invoice using a co-payable check.
- (3) We must take reasonable precautions before making the final disbursement on a major construction project to ensure that the project was satisfactorily completed. Examples include receipt audits, conversations with contractors, on-site progress inspections, and in some cases, affidavits from borrowers and/or contractors. Counsel will obtain and follow guidance from the PDC Loss Verification Department throughout the disbursement period whenever major reconstruction is involved and use co-payable checks where possible and appropriate.
- (4) Check the status of the loan and DOB reports before making any subsequent disbursement. We cannot authorize any disbursement unless the loan is current.

- d. Stipulations Prior to Disbursement. Loans may contain stipulations, which **must** be met before all or part of a loan may be disbursed. These stipulations are categorized:
- (1) Prior to disbursement of any loan funds. No disbursements will be made until the stipulation(s) has been met.
 - (2) Prior to disbursement of loan funds in excess of the unsecured threshold (\$10,000 for physical and \$5,000 for EIDLs). A disbursement for any authorized purpose is allowed up to the unsecured threshold.
 - (3) Prior to disbursement of any loan funds for a specific purpose. No disbursement will be made for the specific purpose until the stipulation(s) has been met. For example, a disbursement of funds to partially refinance an existing secured obligation cannot be made without a reamortization agreement.
 - (4) Prior to disbursement of loan funds in excess of the unsecured threshold (\$10,000 for physical and \$5,000 for EIDLs) for a specific purpose. No disbursement will be made in excess of the unsecured threshold for the specific purpose until the stipulation(s) has been met. For example, when a loan contains a "prior injection" condition, we must have acceptable evidence that the borrower has satisfied the requirement before we can make a disbursement. Examples of acceptable evidence include but are not limited to receipts, paid invoices, cancelled checks, or an onsite inspection indicating that completed repairs have satisfied the prior injection requirement. A disbursement for any other authorized purpose is allowed.

96. DISBURSEMENT AMOUNTS

Base disbursement amounts on the expressed or obvious needs of the borrower. Where the needs are not expressed, obvious from the facts of the case, or easily ascertained during loan closing, the following schedule should be followed.

- a. Unsecured Loans. Disburse fully upon the return of the Note, LAA, evidence of flood insurance where appropriate, and receipt of other necessary documents, such as insurance assignments, eligibility waivers, etc.
- b. Secured Physical Loans.
 - (1) Once collateral conditions and any prior to disbursement stipulations are met, disbursement(s) may be up to \$50,000. For subsequent disbursements above \$50,000, see subparagraph 95.c.
 - (2) When disbursing the RE portion, maintain contact with the borrower as necessary to determine an appropriate disbursement schedule. In cases of do-it-yourself repairs, be sure the borrower's schedule is reasonable.
- c. Secured EIDLs are disbursed consistent with the guidance in the "Use of Proceeds" section of the LAA, once closing requirements are met.

- d. Credit review will be required of all loans that have not been fully disbursed within 12 months from the date of the LAA and annual reviews thereafter until the loan has been fully disbursed. The review will ensure that there have not been any adverse changes in the borrower's financial condition that would impact their ability to repay the loan before we make further disbursements that may be at risk. At a minimum, the credit review must consist of obtaining a new credit report (CBRs and/or D&B Reports), updated financial statements, and the appropriate IRS Form 8821s if the time for filing a new tax return has expired. If an adverse change does occur, we must take the appropriate measures in canceling the loan. This applies to undisbursed and partially disbursed loans.
- e. Upon final disbursement of loan funds, the case file must be shipped to the appropriate servicing office.

97. ESCROW ACCOUNTS AND/OR CONTROLLED ACCOUNTS

Generally, we should not disburse loans through escrow or controlled accounts. Their use should be on an exception basis only, and must be justified in the case file. However, we may use escrow accounts when necessary to conform to State law or requirements of title companies and similar organizations, particularly relating to construction loans, purchase of real estate (including a manufactured home), or when necessary to conform to local laws such as those relating to liquor licenses. In these cases a title company, the borrower's attorney, or a bank may serve as the escrow agent. When we use a controlled account, we must consider the length of time funds may remain in the account due to interest accrual.

98. RESERVED

99. RESERVED

CHAPTER 9

RECONSIDERATION, APPEAL, AND REACCEPTANCE100. RECONSIDERATION OF DECLINED LOAN APPLICATIONS

- a. General Policy. Declined applicants can present additional information which may overcome the reason(s) for the decline. Whenever the applicant requests a reconsideration of our previous lending decision, their case file must be assigned to a new loan officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.
- b. Method and Deadline for Requesting Reconsideration. Requests must be in writing and received within 6 months from the date of the initial decline letter. It is not necessary for the applicant to file a new application in these cases.
- c. Late Requests. We cannot reconsider an application if more than 6 months have elapsed since the date of the initial decline. Generally, applicants must file a new application; however, the ADLP or designee may permit updating of the existing application in some cases.
- d. Content of Request. The written reconsideration request must contain all significant new information (business loan applicants must include current business financial statements) which the applicant believes will overcome all the initial decline reasons. SLOs can accept these requests if the applicant complied with the terms of the decline letter.
- e. Alternate Reasons for Decline Upon Reconsideration. The reason(s) specified in the initial decline letter does not constitute a waiver of SBA's right to decline an application upon reconsideration for other valid reasons. However, the letter should state all of the reasons for the initial decline.
- f. Only an official at the same or higher level as the official who took the final action to decline the original loan application has the authority to take final action on reconsidered applications.
- g. Summary Decline. A reconsideration of a summary decline is an original action because:
 - (1) The applicant did not receive an application; or
 - (2) The application was not formally accepted.
- h. Reconsideration of an Auto-Decline or Pre-LV Review Decline. For reconsideration purposes, treat Auto-Decline and Pre-LV Review declines like any other original decline action.
- i. Special Provisions Applicable to Reconsidered Applications. Applications that lack essential information after acceptance for reconsideration may be withdrawn. When a subsequent withdrawal occurs, the applicant's deadline is the greater of the original deadline or 30 days from the date of the subsequent withdrawal.

101. FURTHER RECONSIDERATION (APPEAL)

- a. General Policy. Applicants declined upon reconsideration can request further reconsideration at the next higher level. Whenever an applicant requests a further reconsideration of our previous lending decision, their case file must be assigned to a new loan officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.
- b. Method and Deadline for Requesting. Requests must be in writing and received within 30 days of the date of the decline letter.

NOTE: If the decline upon reconsideration contains any new reason not previously conveyed to the applicant in the decline letter, we will extend the time frame to a total of 90 days (the standard 30 days plus an additional 60 days).

- c. Content of Request. All requests must include the applicant's justification to reverse the prior decline action(s). If the applicant does not provide new information, you should contact the applicant to see if any is available. Using all available information, you must reprocess the case file to a decision.
- d. Finality of Review - Approvals. The ADLP or designee has final approval authority. The CD/PDC does not have to sign approval recommendations unless there is a split.
- e. Finality of Review - Declines. The CD/PDC or designee has final decline authority. The CD/PDC's decision is final unless:
 - (1) The CD/PDC does not have authority to approve the loan or action; or
 - (2) The CD/PDC refers the matter to the AA/DA; or
 - (3) The AA/DA, upon a showing of special circumstances, requests the PDC to forward the matter to the ODA for final consideration. Special circumstances include policy reconsideration or reevaluation by other elements of the Agency, alleged improper acts by SBA personnel or others, or other considerations.

102. SPECIAL PROVISIONS APPLICABLE TO RECONSIDERATION PROCESSING

- a. You must obtain updated DOB information on all requests for reconsideration of home loan applications. This enables you to determine if the proposed loan duplicates assistance from other agencies. FEMA is the point of contact for DOB information in Presidential disaster declarations.
- b. Under an SBA declaration, check to see if ARC or any other assistance program was active and determine if assistance was awarded.

103. RECONSIDERATION OF DECLINED LOAN MODIFICATION REQUESTS

These requests are subject to the same policies and procedures governing declined disaster loan applications.

104. RECONSIDERATION OF REFUSAL TO CLASSIFY APPLICANT AS MAJOR SOURCE OF EMPLOYMENT (MSE)

If an applicant disagrees with our MSE determination, the procedures are as follows.

- a. The applicant must provide written support for its contention that it meets one of the three employment criteria in subparagraph 42.a.
- b. The ADLP will reconsider the prior determination in light of the applicant's statements, document the recommendation, and forward the case file to the CD/PDC.
- c. The CD/PDC must:
 - (1) Take final action on recommendations for refusal to classify an applicant as an MSE; or
 - (2) Forward the case file to the AA/DA for approval of MSE status (or if there are extenuating circumstances).

105. RECONSIDERATION OF DECLINE FOR EXCEEDING APPLICABLE SIZE STANDARDS

Size standards apply to eligibility of EIDL applicants only. Applications initially declined for size are subject to different reconsideration procedures.

- a. Initial (informal) size decline actions are taken at the SLO level.
- b. Following an initial (informal) size decline the applicant may request a formal size determination. The applicant must submit an SBA Form 355, "Application for Small Business Size Determination," with the request. There is no time limitation for making a formal size determination for purposes of financial assistance [13 CFR §121.303(e)].
- c. Formal size decline actions are taken by the CD/PDC or designee.
- d. Following a formal decline for size, the applicant may petition the Office of Hearings and Appeals (OHA) in Washington, D.C. The appeal petition must be served and filed within 30 days after receipt of the formal size determination decline letter [13 CFR §134.304(a)(2)].
- e. Size determinations do not count as "actions" for purposes of the reconsideration and appeal process.

106. REACCEPTANCE OF WITHDRAWN APPLICATIONS

- a. General Policy. Applicants can request reacceptance of withdrawn applications.
- b. Types of Withdrawal Actions. Withdrawal actions result from:
 - (1) SBA action (including case file consolidation); or
 - (2) Applicant's request.

- c. Method and Deadline for Requesting. Generally, requests must be in writing, and received within 6 months from the date of the withdrawal. Verbal requests may be granted on a case-by-case basis with justification in the chron log.
- d. Content of Request. When applicable, the applicant must provide all information specified in our withdrawal letter. When we initiate the withdrawal, the applicant must also show that:
 - (1) Our action was in error; or
 - (2) The withdrawal resulted from causes beyond the applicant's control.
- e. Late Requests. We cannot reaccept an application if more than 6 months have elapsed since the date of the withdrawal. However, we may grant permission to file a late application. If we authorize late filing, a new application is not always necessary. You must obtain current financial and credit information before processing the application (see subparagraph 100.c.).
- f. Special Provisions Applicable to Reaccepted Applications.
 - (1) We do not reaccept applications without reasonable assurance we can make a loan decision with the new information. This avoids withdrawing an application a second time.
 - (2) Applications that lack essential information after reacceptance may again be withdrawn. When a subsequent withdrawal occurs, the applicant's deadline is the greater of the original deadline or 30 days from the date of the subsequent withdrawal.

107. RESERVED

CHAPTER 10

LOAN SERVICING, CANCELLATION, REINSTATEMENT,
AND LOAN MODIFICATION

108. DISASTER LOAN SERVICING RESPONSIBILITY

The PDC is responsible for necessary servicing actions until the loan is transmitted to the appropriate servicing office. These include, but are not limited to:

- a. Monitoring disaster loan installment payments and reviewing delinquency reports;
- b. Contacting past due borrowers by telephone, issuing the appropriate collection notice, and encouraging prompt payment; and
- c. Deferring payments and reamortizing loans.

109. CANCELLATION

a. At Request of Borrower. When we receive a written or oral request, we may cancel all or any portion of an approved loan. Be careful before acting on an oral request to ensure cancellation is appropriate.

b. Actions by SBA. We must initiate action to cancel all or any portion of an approved loan if:

- (1) The borrower fails to complete and return all LCDs by the deadline; or
- (2) The borrower does not satisfy all terms and conditions of the LAA; or
- (3) A substantial adverse change in the borrower's financial or other condition occurs; or
- (4) The borrower does not qualify for full disbursement during the original disbursement period; or
- (5) The borrower does not request or receive approval for extension.

c. Notification Procedure.

- (1) Before we initiate an action to cancel all or any funds, we must mail a letter giving 14 calendar days notice of the pending cancellation. The letter must specify the action the borrower can take to prevent the cancellation.

EXCEPTION: A 14-day letter is not required when the cause for the cancellation is due to the borrower's request or we received notification that the borrower has filed for bankruptcy.

- (2) Prior to submitting the loan modification for cancellation of the loan, the loan officer should contact the borrower to explain our action and the reasons for the cancellation. The loan officer will advise the borrower that written notification is forthcoming which will include information regarding the method and deadline for requesting reinstatement (see paragraph 110.a.). The loan officer must also advise the borrower that if we approve the reinstatement request new loan closing documents will be issued and that the original documents are no longer valid and should be destroyed.

NOTE: The chron log should clearly reflect the details of this conversation; the reason(s) for the cancellation, the reinstatement process, and if approved, the issuance of new loan closing documents.

- d. Documentation. You must document all cancellations through a loan modification using the codes listed in appendix 13.

110. REINSTATEMENT OF CANCELLED LOAN

Borrowers may request reinstatement of all or any portion of a cancelled loan. We cannot reinstate any portion of a partially cancelled loan unless the borrower is current in all respects and maintains a satisfactory payment history.

- a. Method and Deadline for Requesting Reinstatement. All requests for reinstatement must:

- (1) Be in writing and be made within 6 months of the date of the cancellation; and
- (2) Show that our cancellation action was in error; or
- (3) Provide justification that we should reinstate the funds.

- b. Late Reinstatement Requests - General Policy. We will not reinstate funds if:

- (1) Six months have elapsed from the date of the cancellation or reduction action, or
- (2) There is NO outstanding balance (the loan was cancelled in full or the disbursed balance has been paid off).

NOTE: The borrower may cite their reasons for the delay as the basis for late filing of a new application.

- c. Late Reinstatement Requests - Exceptions to General Policy. We may reinstate funds if:

- (1) We cancelled undisbursed funds because the borrower could not qualify for full disbursement due to reasons beyond their control; and
- (2) The borrower has an outstanding loan balance and a satisfactory payment history; and
- (3) The borrower submits a request within 6 months of overcoming the reasons for the delay; and
- (4) The borrower provides all outstanding requirements.

- d. Loan Closing Documents.

- (1) Upon approval of the reinstatement, we will issue new loan closing documents, including a new Promissory Note with a current Note date.

- (2) When a mortgage or deed of trust (lien documents) reflecting the old Note date has been recorded, a release must be filed and a new mortgage or deed of trust reflecting the new Note date issued and recorded. Case managers should consult leads and senior staff to determine the best way to minimize costs to the borrower that are associated with releasing the old lien and recording a new one.

NOTE: We should not reinstate a cancelled loan for which the borrower wishes to use his eligibility to relocate unless the borrower has identified a property and is prepared to move forward.

111. LOAN MODIFICATION

- a. Amendments and Modifications to Loan Authorizations. You must make any necessary amendment(s) or modification(s) to any term or stipulation of an LAA in the case file.
- b. Authority to Approve Loan Modifications. This authority is based on the highest level of authorization utilized at original processing and/or on prior loan modifications. The exceptions are correcting typographical errors or taking any of the actions described in subparagraph 8.a.(2) (see subparagraph 8.b. for General Limits on Loan Approval Authority).
- c. Authority to Decline Loan Modifications.
 - (1) For loans originally approved by an SLO, any official with delegated authority may decline a loan modification request.
 - (2) For loans originally approved by the ADLP, CD/PDC, or ODA, the ADLP must take final action to decline any loan modification request.
- d. Truth in Lending Act. Any modification of the terms set forth in Form 2158 that changes the amount in the Total of Payments block of the form requires that you issue a new Form 2158 to the borrower(s). Any collateral change which involves the addition of a borrower's or principal's primary residence requires that the Legal Department issue a new Form 2159 for the new collateral only.
- e. Asset Sale Loans. SBA cannot modify a loan that has been sold to a third party.

112. INCREASES IN PHYSICAL LOANS

Generally, a borrower will make a request for a loan increase for additional disaster related damages as soon as possible after discovering the need for additional funds. SBA will not consider a request for a loan increase received more than **two (2) years** from the date of the original LAA (the loan approval date). The AA/DA can waive the two-year limit due to extraordinary and unforeseeable circumstances beyond the control of the borrower.

- a. The increase must be requested and used to cover eligible damages resulting from events that occurred after the loan was approved and beyond the borrower's control. This includes:
- (1) Accelerated costs;
 - (2) Hidden damage; and/or
 - (3) Post-Approval Building Code Requirements. (Additional building code requirements not known to be in effect when the loan was approved; or building code requirements passed by the appropriate authority after the loan was approved.)
 - (4) Contractor Malfeasance (see subparagraph 112.c. below).
- b. Processing Requests for Increases.
- (1) Increases are handled by loan processing and are subject to reasonable requests for financial statements and other processing data. If an increase puts the loan into the secured category, you must amend the LAA to require collateral and other necessary conditions/stipulations.
 - (2) The same or a higher level of authority as the person approving the original loan must approve the increase.
- c. Contractor Malfeasance. SBA may increase a disaster loan up to the administrative lending limits to fund additional costs incurred due to contractor malfeasance in the repair of a damaged site or in the construction of a relocation property (subject to normal credit review). The amount of the funds attributable to the malfeasance must be determined by the LV. The case file must include documentation of the type and amount of the malfeasance (e.g., borrower's letter, notification from the local building authority, etc.). The approval must contain the following stipulations:
- (1) SBA will require a performance bond (see subparagraph 54.c.);
 - (2) The borrower will pursue all possible recovery from the negligible party including filing a claim or lawsuit against the contractor; and
 - (3) SBA will take an assignment of any proceeds from the claim or lawsuit.
- Final approval of the loan increase must be taken at the ADLP level or higher.
- NOTE:** EIDL funds are not eligible for consideration under contractor malfeasance.

113. RESERVED

CHAPTER 11

ECONOMIC INJURY DISASTER LOANS:POLICIES AND ELIGIBILITY114. AUTHORITY FOR ECONOMIC INJURY DISASTER LOANS (EIDLs)

Section 7(b)(2) of the Small Business Act authorizes SBA to make working capital loans to eligible farm related and non-farm related small business concerns and small agricultural cooperatives which:

- a. Are located within the declared disaster area; and
- b. Have suffered, or are likely to suffer, substantial economic injury as a result of the disaster; and
- c. Do not have credit available elsewhere.

NOTE: A small business need not suffer any physical damage to be eligible for EIDL assistance.

115. LEGISLATIVE LIMIT ON ECONOMIC INJURY LOAN AMOUNT

The legislative limit of \$1,500,000 on disaster business loans applies to EIDLs. The limit applies to the total of all direct physical and economic injury disaster loans approved to any one borrower and its affiliates for any one disaster (see subparagraphs 41.b. and 41.c. for exceptions).

116. DEFINITIONS

For purposes of establishing EIDL eligibility, the following definitions apply.

- a. Small means any business concern or agricultural cooperative meeting the applicable size standard for its industry (see appendix 21).
- b. Business concern or concern means any business entity organized for profit, with a place of business located in the United States which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. The business concern may be in the form of an individual proprietorship, partnership, limited liability entity, corporation, joint venture, association, trust, or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business concerns in the joint venture. Generally, concerns eligible for EIDLs must conform to SBA's 7(a) program requirements.
- c. Agricultural cooperative means those cooperatives acting pursuant to the provisions of the Agricultural Marketing Act [12 U.S.C. 114(j)] and Section 3(j) of the Small Business Act. These associations operate for the mutual benefit of the members (producers or purchasers) and conform to (1) or (2) and, in all cases, (3) below:

- (1) No member of the association is allowed more than one vote because of the amount of stock or membership capital they may own therein;
- (2) The association does not pay dividends on stock or membership capital in excess of 8 percent per annum; and
- (3) The association does not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of the business transacted with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by the association.

117. BASIC ELIGIBILITY DETERMINATIONS

You must make three basic eligibility determinations on all EIDL applications.

- a. Location. Section 7(b)(2) of the Small Business Act requires that all EIDL applicants be located in a declared disaster area. This includes all counties covered in the declaration. There must be a physical presence in the disaster-affected area for a business to be eligible. An applicant's economic presence alone in the affected area(s) does not meet this location requirement, nor does it meet the intent of the regulation. The applicant must demonstrate a physical presence. The physical presence must relate to the claimed economic injury and should be tangible and significant. Merely having a P.O. Box in the disaster area would not qualify as a physical presence.
- b. Business Activity. You must consider two measures of business activity. Both must be an eligible activity in order for the applicant to be eligible for EIDL assistance.
 - (1) Business Loss Activity: The activity for which the loss is being claimed must be eligible. Agricultural enterprises are the most common ineligible activities conducted by sole proprietors. If this is the primary industry, the proprietor is ineligible regardless of the nature of the activity claiming the loss. (For the specific policy concerning the eligibility of agricultural enterprises, see subparagraph 120 b.(5)).
 - (2) Primary Industry: You must determine if the applicant business concern, combined with its affiliates (refer to SOP subparagraph 64.c.(3), appendix 21.5.(b), and 13 CFR §121.103 for guidance on determining affiliation), conducts more than one type of business. If so, you must identify the primary industry of the affiliated group. This is generally the activity producing the most revenue (refer to 13 CFR §121.107). The primary industry of the affiliated group must be an otherwise eligible activity for the applicant to be eligible, regardless of the nature of the loss activity.

Example:

Joe Smith owns 100% of a corporation named ABC, Inc. which operates a clothing store. ABC, Inc. applied for an EIDL as a result of a 2006 disaster. Mr. Smith also owns a farm and reports income from his farm operation on Schedule F of his personal IRS Form 1040, Federal Income Tax Return. He reported gross revenue of \$750,000 for the farm operation in 2005 which was the year preceding the disaster. The gross revenue for ABC, Inc. in 2005 was \$240,000. As a result, the primary industry of the affiliated group is farming which is ineligible for EIDL assistance. Farming is the primary industry because the farm operation generated more gross revenue in the year preceding the disaster than the clothing store. This means neither the farm operation nor ABC, Inc. would be eligible to receive an EIDL. However, if ABC, Inc. had physical losses as a result of the disaster, they would be eligible for a physical loan only.

- c. Size. An applicant for an EIDL must be a small business concern. The applicant business, including any affiliates, must satisfy two criteria (13 CFR§121.301):

- (1) The size of the applicant alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged; and
- (2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher.

(For guidance on making the size determination, refer to appendix 21 and 13 CFR §121.)

118. INDEPENDENTLY OWNED AND OPERATED BUSINESS

Section 3(a) of the Small Business Act states: "For the purpose of this Act, a small business concern ... shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation ..." You decide these issues on a case-by-case basis.

- a. Critical Factors. You must examine two critical factors to determine if a business is independently owned and operated.

- (1) The owner(s) must have a business risk resulting from investing in facilities or equipment and by incurring ongoing expenses, which must be paid regardless of whether the operation generates a profit. The owner must share the risk of both the profits and the losses.

For example, an individual participates as a crewmember on a fishing boat and does not have an investment in the boat or equipment. The crewmember works for a share of the catch, reduced by certain trip expenses (fuel, food, etc.), which are deducted from the catch. If the catch is insufficient to cover the expenses, the crewmember incurs no liability for trip expenses. Thus, this individual is not a small business concern and is not eligible for EIDL assistance.

- (2) The business operation must be free from significant control by other concerns (e.g., the customers or businesses that pay for its services). However, in determining what constitutes significant control, loan officers should consider that a state licensing prerequisite that requires an independent contractor to work in conjunction with a licensed firm does not, in and of itself, disqualify an independent contractor from participation in the EIDL program.

For example, in the real estate industry, the broker/agent relationship is often more related to State law rather than any sort of significant day-to-day control over what the agent does in terms of how they conduct their business, build their clientele, or market their services. Many agents operate to a great deal independently of the broker with their own websites, marketing materials/programs, and may even have their own staff including licensed assistants and transaction coordinators. In such cases, it is possible, considering all relevant circumstances, to find that the agent is an independently owned and operated business and may be eligible.

Some factors to consider in making eligibility determination include:

- (a) An agent is engaged by the broker for an indefinite period of time.
- (b) The agent is not required to follow a routine or schedule set by the firm and is free to set his own working hours.
- (c) The broker firm may furnish forms, records, and promotional materials, but the agent furnishes his own place of business, equipment, all other materials, and supplies used in performing his services.
- (d) The agent may independently hire, supervise, pay, and discharge others assisting him.
- (e) The broker firm pays the agent strictly on a commission basis. The agent receives no pension, sick leave days, paid vacation days, or bonuses and has no guaranteed minimum amount of pay. The broker does not carry workmen's compensation insurance on the agent and does not deduct social security taxes or Federal or state income taxes from the agent's pay.
- (f) Substantially all payments for their services as agents are directly related to sales, rather than the number of hours worked.
- (g) Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes.
- (h) Possession of a business license does not in and of itself create eligibility.
- (i) If the applicant is a franchise, refer to counsel for eligibility guidance.

- b. Effect of IRS Guidelines. Not all self-employed persons or independent contractors for tax purposes rise to the level of "small business concern" as required for EIDL eligibility. Merely filing a Schedule C with the Federal Tax Return does not qualify the individual as an independently owned and operated business. We are not bound by IRS guidelines for determining if an individual is an employee or an independent contractor. EIDL eligibility is contingent upon compliance with the business risk and freedom from control factors.

119. APPLICANTS GENERALLY ELIGIBLE

Generally, applicants eligible for regular SBA business loans [7(a)] are also eligible for EIDLs. However, owners of rental property (landlords) are eligible for EIDLs, although not for regular SBA business loans.

120. INELIGIBLE EIDL APPLICANTS

- a. The following applicants are not eligible for EIDL or 7(a) assistance.
- (1) Religious Organizations.
 - (2) Eleemosynary (Charitable) Organizations.
 - (3) Nonprofit Organizations.
 - (4) Consumer and Marketing Cooperatives. However, other cooperatives and small agricultural cooperatives meeting applicable size standards are eligible.
 - (5) Gambling Concerns. Concerns that derive more than one-third of their annual gross revenue from legal gambling activities.
 - (6) Casinos, Racetracks, Etc. Businesses whose purpose for being is gambling (such as casinos, racetracks, poker parlors, etc.) are not eligible for EIDL assistance regardless of their ability to meet the one-third criteria established for otherwise eligible concerns.
 - (7) Concerns Engaged in Illegal Activities.
 - (8) Lending or Investment Concerns.
 - (9) Speculative Activities.
 - (10) Pawn shops, when 50 percent or more of previous year's income was derived from interest.
 - (11) Real Estate Developers. Establishments primarily engaged in subdividing real property into lots and developing it for resale on their own account.
 - (12) Multi-level Sales Distribution (Pyramid) Concerns.
 - (13) Loan packagers who derive 30 percent or more of their annual volume from the preparation of applications seeking financial assistance from SBA.

- (14) Concerns with Principals Incarcerated, on Parole or Probation. The concern remains ineligible if the parole or probation is lifted solely because it is an impediment to obtaining a loan. [see possible exceptions in subparagraphs 74.c.(2)(d) and 74.c.(4)(d).]
 - (15) Government-owned concerns, except for businesses owned or controlled by a Native American tribe
 - (16) Political or Lobbying Concerns
 - (17) Concerns Engaged in the Sale of Products or Services or Live Performances of a Prurient Sexual Nature.
- b. The following applicants are not eligible for EIDL assistance; however, they may be eligible for 7(a) assistance.
- (1) Concerns Not Located in the Declared Disaster Area.
 - (2) Concerns Determined by SBA to have Credit Available Elsewhere.
 - (3) Concerns Involved in Change in Ownership Situations. Concerns which had a substantial change of ownership (more than 50 percent) after the impending economic injury became apparent, and no contract of sale existed prior to that time are ineligible (see possible exceptions in subparagraph 13.h.).
 - (4) Concerns Established Post-Disaster. If a small concern was established after an impending economic injury became apparent, the owner assumed the risk and did not incur economic injury.

NOTE: The only exception to the above subparagraph 120.b.(3) & (4) is under a Secretary of Agriculture designation. In the case of a single declaration covering multiple years, an eligibility determination due to the change in ownership or creation of a new business after the onset of the disaster would need further review. This determination is due to the delayed time from the onset of the disaster to the date the disaster is declared and should be conducted on a case-by-case basis (see appendix 20, Section A.). Historically, a new or separate declaration for each year is issued and this may give eligibility for the business.

Example: The Secretary of Agriculture declaration has an incident period that covers January 1, 2001 through June 30, 2003 or multiple years due to drought conditions. The onset of the disaster was January 1, 2001 but the applicant did not purchase the business until January 2, 2002. In this example, the onset of the incident date is prior to a change in ownership or new business creation. However, the business is determined to be eligible from the date the business was purchased since crops in 2002 and 2003 were affected by the drought conditions.

- (5) Agricultural Enterprises. If the primary activity of the business (including its affiliates) is agricultural, as defined in Section 18(b)(1) of the Small Business Act, neither the business nor its affiliates are eligible for EIDL assistance even though the non-agricultural portion of an agricultural enterprise may be eligible for business disaster assistance (see subparagraph 15.g.).

- (6) Feedlot Operators. Feedlot operators are not eligible for EIDL assistance, regardless of the manner in which they operate (i.e., buying and selling the livestock at their own risk; feeding livestock owned by another and being compensated based upon weight gain; feeding livestock owned by another and being compensated on the basis of cost of feed plus space rent). A feedlot operator constitutes an "agricultural enterprise" as defined by the Small Business Act.
- (7) Members of Congress who hold a direct or indirect ownership interest in an unincorporated small business, in collateral, or in a corporation that would require them to enter into a contract with SBA (see subparagraph 15.j).

121. OTHER ELIGIBILITY MATTERS

a. Loggers.

- (1) In physical declarations, loggers are treated like any other business and their EIDL eligibility determined by the effect of the physical disaster on their business.
- (2) In Secretary of Agriculture designations (SecAgs), it should be rare to find loggers eligible for an EIDL (see exception in the Note in subparagraph b. below.) In SecAgs that result from excessive rainfall, hail, flooding, etc., damage to trees, if any, is usually minimal. It would be a rare case where the logger could show that there was economic injury based on the effect of the loss of the timber "crop" on the landowner. The result is the same if the logger is to cut trees on private property (including tree farms) or on public property.

b. Drought. Under Secretary of Agriculture and Governor's Certification disaster declarations, drought is an eligible declaration type. Therefore, small businesses and small agricultural cooperatives that have suffered economic injury as a direct result of drought are eligible for EIDL assistance under both types of declarations. As drought is not an eligible declaration type under a Presidential or Administrative declaration, physical disaster assistance is not available.

NOTE: For loggers economic injury can be attributed to limited or no access to the trees because of the potential fire hazard as result of harvesting.

c. Below Average Water Levels. The Administrator may declare a disaster for below average water levels on the Great Lakes, or on any body of water that supports commerce by small business concerns.

NOTE: This includes, but is not limited to, lakes, rivers, creeks, channels, and other bodies of water that support small business concerns. It also includes bodies of water that border, but are not completely in, the United States, such as the Great Lakes (which share a border with Canada) or the Rio Grande River (which shares a border with Mexico).

d. Nurseries. SBA regulations define nurseries as commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod. This type of business is a nursery farm and is an agricultural enterprise. For purposes of EIDL eligibility, nurseries deriving less than 50 percent of annual receipts from the production of nursery or other agricultural products are not agricultural enterprises (see subparagraph 120.b.(5)).

- (1) In SecAgs and Governor's Certification declarations specifically for drought, nursery farms, wholesale nurseries, and retail nurseries are all eligible for EIDL assistance, by statute.
- (2) In Presidential and Administrative declarations, nurseries (as defined by SBA) are not eligible for EIDL assistance because they are classified as agricultural enterprises. Wholesale and retail nurseries, that is, nurseries that do not produce or propagate the majority of the merchandise which they sell, are eligible except for the portion of their business activity, which deals with propagation.

e. Changes in Market or Commodity Prices. Changes in market or commodity prices, for whatever reasons, do not constitute a basis to find eligible economic injury.

f. Military Reservist EIDL (MREIDL).

- (1) The intent of this program is to provide working capital assistance to small businesses that experience, or will experience, financial difficulties as a result of an essential employee being called up for active duty as a Reservist or member of the National Guard due to a period of military conflict. An essential employee is an individual (whether or not the owner of the small business) whose managerial or technical expertise is critical to the successful day-to-day operations of the applicant small business.
- (2) Period of military conflict is (1) a period of war declared by Congress, or (2) a period of national emergency declared by Congress or the President, or (3) a period of contingency operation. A contingency operation is designated by the Secretary of Defense as an operation in which our military may become involved in military actions, operations, or hostilities (e.g., peacekeeping operations).

NOTE: A period of military conflict does not include instances when the Governor may activate the Guard as a result of a disaster event.

122. **RESERVED**

CHAPTER 12

ECONOMIC INJURY DISASTER LOANS:ANALYSIS AND PROCESSING123. METHODS OF ANALYSIS

There are two different methods of EIDL analysis: Phase I and Phase II.

a. Phase I:

- (1) Applies to all physical declarations (Presidential and Administrative, or Agency); and
- (2) Does not require a needs analysis.

b. Phase II:

- (1) Applies to:

(a) Stand Alone EIDL:(i) SecAgs;(ii) Governor's Certifications [7(b)(2)(D)];(iii) Applicants in contiguous counties in Presidential declarations;(iv) Cases without physical damage to the applicant's business;(b) All reconsideration requests;(c) All increase requests (including Phase I EIDLs);(d) Any B/E application received 60 days after the incident ending date;(e) All MSE requests;(f) MREIDLs;(g) Any applicant not agreeable with the Phase I EIDL amount;(h) When the Phase I eligibility computation exceeds \$100,000 (see subparagraph 125.d.).

- (2) Requires a needs analysis.

124. DEFINITIONS

For the purpose of EIDL analysis, the following definitions apply.

- a. Needs are working capital requirements the business could have covered had the disaster not occurred, but cannot meet on its own or through other resources or recoveries until normal operations resume.

- b. Economic Injury (EI) is a change in the financial condition of a small business concern or small agricultural cooperative attributable to the effect of a specific disaster, resulting in the inability of the concern to meet its obligations as they mature, or to pay ordinary and necessary operating expenses. Economic injury may be reduced working capital, increased expenses, cash shortage due to frozen inventory or receivables, accelerated debt, etc.
- c. Gross Margin (GM) is sales less Cost of Goods Sold (COGS). Gross Margin Percent (GM%) is GM divided by sales.
- d. Modified Contribution Margin (MCM) is sales, less COGS, less obviously variable expenses. Modified Contribution Margin Percent (MCM%) is MCM divided by sales.
- e. Extraordinary items are needs which are outside of normal operations caused directly by the disaster.
- f. Transferability of EIDL Eligibility (For an existing business to be transferred to a new business). This policy applies in all cases when an EIDL applicant elects to discontinue the disaster impacted operation and immediately pursue another business venture. Both the existing and new concerns must qualify as small businesses and be in compliance with 13 CFR §123.300 and §123.301. As in all cases, you must fully document and justify the ability of the new company to repay any proposed disaster loan(s) taking into account all start-up costs, working capital requirements, and contingencies. The amount of EIDL eligibility in these cases is strictly based upon an analysis of the disaster impacted business. **For Phase II processing**, you must make a reasonable presumption of the return to normal operations for the existing business had it continued. The working capital requirements of the new business are not to be considered for determining EIDL eligibility. However, loan amounts must be limited to the working capital needs of the new business when it is obvious that the EIDL eligibility of the old business exceeded those needs.

125. PHASE I METHOD

Phase I assumes a business physically damaged has also sustained economic injury (EI) and provides immediate working capital to eligible applicants. Historically, two months of GM is generally sufficient to sustain the business until normal operations resume. The business must have been operating for at least one year prior to the disaster and apply for a physical loan. If the applicant requests more EI funds than we can authorize under Phase I, you must use the Phase II method.

- a. Processing Procedure. Use the trend analysis defined in appendix 20 to determine normal annual sales and normal GM for the last completed tax year. Make no adjustments to COGS when determining GM.
 - (1) You must consider insurance or other compensation received to offset the economic injury in determining the loan amount.

- (2) You cannot decline any EIDL application under Phase I for unsubstantiated economic injury (decline code 31).
 - (3) When processing applications for **disaster damaged rental properties (residential and commercial)** the LO must call the applicant or authorized representative and ask if there was any loss of rents and/or added expenses as a result of the disaster. If the answer is no, then the LO must withdraw the loan request for economic injury (code 56). If the answer is yes, then the LO must get the information regarding the extent of lost rents and/or additional expenses due to the disaster and process using Phase I method, but not to exceed lost rents and/or additional expenses. Additionally, all conversations with the applicant must be documented in the chron log.
- b. Computation. Phase I EI = (Normal Annual Sales x Normal GM%) ÷ 6.
 - c. CET Determination. If you determine that the applicant has no credit available elsewhere, you must assume that no personal, business, or affiliate resources are available to offset the EI amount.
 - d. Loan Amounts. Phase I loan amounts cannot exceed the lesser of three times the SBA verified physical loss or \$100,000 for each applicant.
- NOTE:** If the amount computed in paragraph b. above is greater than \$100,000, Phase II processing is required.
- e. Use of Proceeds. The use of proceeds is restricted to the categories of working capital and notes payable.
 - f. Approval Authority. **Any SLO 2 or 3 may take final action on a Phase I EIDL.**

126. **RESERVED**

127. **PHASE II METHOD**

The greater amount of detail necessary for Phase **II** is due to the likelihood of extended injury periods and the identification of essential needs.

- a. Processing Procedure and Computation.
You must use the Phase II EIDL Worksheet in the case file to complete a Phase II analysis. Unlike Phase I, Phase II does not use GM, but instead uses the MCM to measure EI. Processing procedures are as follows.
 - (1) Identify the injury period in accordance with appendix 20.
 - (2) Determine Normal Sales, Normal MCM percent, Injury Period Sales and Injury Period MCM percent in accordance with appendix 20. Adjust COGS and other variable expenses when necessary to make the normal MCM and injury period MCM components comparable.
 - (3) Phase **II** Lost MCM = Normal MCM - Injury Period MCM.

- (4) Determine if it is necessary to include any extraordinary items in the loan amount in accordance with appendix 20.
 - (5) Add (3) and (4). The result is total EI. This amount serves as a limit to the amount of needs that are attributable to the disaster and addressed by an EIDL.
 - (6) Calculate the total financial needs of the business in accordance with appendix 20. The only criteria for the needs calculation is that the need be essential to the continued viability of the business. Needs must be reduced by the availability of excess personal or business or affiliate resources.
- b. Loan Amount. The loan amount cannot exceed the lesser of needs or EI. When needs exceed economic injury, you must explain in the EIDL Worksheet, Section E, how the applicant is going to meet this shortfall. If significant, it may prohibit loan approval.
 - c. Use of Proceeds. Generally, eligible uses of Phase II proceeds are limited to working capital, notes payable, and accounts payable.
 - d. Approval Authority. Only Cadre SLO 3 or others having a specific EIDL delegation from the AA/DA can take final action on a Phase II approval (see subparagraph 8.b.(1)(c)).

CHAPTER 13

ECONOMIC INJURY DISASTER LOANS:TERMS AND CONDITIONS128. LOAN TERMS AND INSTALLMENT AMOUNTS

- a. Interest Rates. By statute, we can authorize EIDLs only at the business no credit elsewhere (NCE) interest rate (see paragraph 46).

NOTE: The interest rate to be assigned to MREIDL approvals changes quarterly. However, once the appropriate interest rate is assigned to an approved MREIDL loan, it remains fixed. The proper interest rate to be applied to any MREIDL loan is SBA's published EIDL interest rate at the time the MREIDL case file is APPROVED (see appendix 10).

- b. Maximum Term. The maximum term for an EIDL is 30 years.
- c. Establishing the Term. We base the loan payment upon the applicant's ability to repay the loan. However, when a significant portion of the loan amount is based upon frozen inventory or receivables, a shorter term may be appropriate because the applicant's cash flow will improve as the inventory or receivables are converted to cash. The shorter term would not be appropriate if the injury resulted from inventory which became obsolete or accounts which were charged-off.
- d. Installment Amounts and Frequency of Payments. Generally, you set EIDL payments in equal monthly installments of principal and interest which will fully amortize the loan. However the exceptions in subparagraphs 47.e.(1) and 47.f. apply.
- e. First Payment Due Date. Generally, you use the standard deferment of 4 months (i.e., first payment due 5 months from date of Note). Approval authority for EIDL nonstandard deferments is subject to the provisions of subparagraph 47.g.(2). You can use a nonstandard deferment if:
- (1) There is major damage involving lengthy repairs; or
 - (2) The injury period extends more than 5 months into the future; or
 - (3) The due date is at a low point in the applicant's business cycle (e.g., if the applicant does snow removal work, and has little cash flow during the summer months, payments should not begin until cash flow resumes).

NOTE: When reinstating a cancelled loan the new loan closing documents will reflect the initial deferment of the first payment due date as reflected in the original loan closing documents.

129. COLLATERAL AND GUARANTEE REQUIREMENTS

- a. Unsecured and Secured EIDL Loan Limits. You must secure **any EIDL** in excess of \$5,000.
 - (1) You may secure EIDLs of \$5,000 or less only if the applicant voluntarily offers collateral (generally for tax purposes). In these cases, you must document in the case file that you did not require or solicit an offer of collateral, but the borrower voluntarily offered it.
 - (2) If more than one EIDL is made to the same borrower (including its affiliates) for the same disaster, aggregate the loans. You must secure each loan if the aggregate amount is more than \$5,000.
- b. Availability and Adequacy of Collateral. The procedures for determining availability and adequacy of collateral for EIDLs are identical to those for physical business loans (see subparagraph 48.c).
- c. Guarantee Requirements. The guarantee requirements for EIDLs are identical to those for physical business loans (see subparagraph 49.b).

130. INELIGIBLE USES OF EIDL LOAN PROCEEDS.

EIDL proceeds may not be used for:

- a. Payment of any dividends or bonuses;
- b. Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant;
- c. Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship to the stockholder/principal;
- d. Expansion of facilities or acquisition of fixed assets;
- e. Repair or replacement of physical damages;
- f. Refinancing long term debt;
- g. Paying down (other than regular installment payments) or paying off loans provided, guaranteed, or insured by another Federal agency or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) are not considered Federal agencies for this purpose.
- h. Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.

- (1) If a direct Federal debt is delinquent, your recommendation must be based on independent written documentation from the appropriate Federal agency explaining how the delinquency will be cured.
- (2) If a direct Federal debt is delinquent because of the disaster, we should make arrangements with that Federal creditor to have payments deferred or a similar action taken to bring the delinquency current prior to approval of an EIDL. If the Federal creditor cannot or will not cooperate, the likely result will be a decline of the EIDL request. However, if the applicant has other resources or recoveries, we should generally allow (and perhaps require) those resources to be applied first to ineligible needs, such as the payment of direct Federal debt.
- (3) When processing during the injury period, it is generally appropriate for you to negotiate with Federal creditors to defer payments (or take similar action) until the end of the injury period. You must document why this was or was not imposed.
 - i. **Contractor malfeasance.**

131. INSURANCE REQUIREMENTS

- a. Hazard Insurance. Secured EIDLs are subject to the same hazard insurance requirements as secured physical loans (see paragraph 50).
- b. Flood Insurance.
 - (1) By Statute. As a condition of any Federal assistance secured by improved real estate (or a manufactured home) located in an SFHA, the building and any personal property securing the loan must be covered by flood insurance before any loan disbursement.
 - (2) For Credit Reasons. If the business location is not taken as collateral, but is in an SFHA or has been repeatedly flooded, we must require flood insurance for credit reasons. Generally, the amount of coverage will be the lesser of the loan amount or the maximum insurance available.
- c. Business Interruption Insurance. We do not generally require an EIDL recipient to purchase business interruption insurance as a condition of loan approval.

132. LOAN CLOSING AND DISBURSEMENT

We close EIDLs in the same manner as physical disaster loans (see chapter 8). Because there are no physical repairs associated with an EIDL, we generally make full disbursement as soon as the borrower has satisfied all relevant **LAA stipulations and conditions**.

APPENDIX 1

INDEX TO FORMS AND REPORTS

This appendix contains a listing of the authorized forms and reports used in conjunction with disaster loan making.

SBA Form (SBA Form unless otherwise identified)

<u>Edition</u>		<u>Date</u>	<u>Paragraph</u>
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5	Disaster Business Loan Application - Spanish	8-07	64
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5C	Disaster Home Loan Application - Spanish	5-07	63
5M	Pre-Disaster Mitigation Small Business Loan Application	12-06	appendix 28
90-69	Disaster Assistance Registration (FEMA Form)		60
143	Credit Inquiry Letter	12-97	36
147B	Note – Secured Disaster Loans	5-00	95
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159D	Compensation Agreement	7-05	9, 72, appendix 14
160	Resolution of Board of Directors	7-05	
160A	Certificate as to Partners	7-05	
FD-258	Fingerprint Card (FBI Form)		74
355	Application for Small Business Size Determination	10-01	105
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403	Unsecured Note	5-00	95
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700	Disaster Home/Business Loan Inquiry Record	12-06	60
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722	Equal Employment Opportunity Poster – English and Spanish	10-02	53
743A	Screening Checklist – Disaster Home Loans	12-00	69
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743M	Screening Checklist – Pre-Disaster Mitigation Loans	4-03	appendix 28
743R	Screening Checklist – Military Reservist Loans	8-01	appendix 10
793	Notice to New SBA Borrowers	10-97	53
912	Statement of Personal History	10-03	74
927	Mortgage	3-73	95
929	Deed of Trust	10-71	95
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1363	Summary Decline Letter (Presidential – FEMA Referral)	9-05	61
1363A	Summary Decline Letter (Agency – Other Referral)	9-05	61
1363NR	Summary Decline Letter (Presidential – No Referral)	9-05	61
1363RC	Summary Decline Letter (Agency – American Red Cross)	9-05	61
1366	Borrower's Progress Certification	5-07	95
1368	Additional Filing Requirements EIDL Applications	3-04	62
1368	Additional Filing Requirements EIDL Applications - Spanish	8-07	62
1391	Loan Authorization and Agreement	6-03	87, appendix 28
1391H	Loan Authorization and Agreement – Home Loan Catalog	6-03	87, appendix 28
1391HBE	Loan Authorization and Agreement – Home, Business, EIDL Catalog	6-03	87, appendix 28
1391M	Loan Authorization and Agreement- Pre-Disaster Mitigation Loan Catalog – BU/BS	6-03	87, appendix 28
1391R	Loan Authorization and Agreement – Military Reservist EIDL Catalog	8-01	87, appendix 10, appendix 28
1643	Automated 7-Day Letter	10-05	71
1643Z	Hard Copy 7-Day Letter, Field Use Only	10-05	69
1646	Notice of Missing Information	12-06	69
1711	Certification Regarding Lobbying	8-92	
1846	Statement Regarding Lobbying	8-92	

2121	Notice To All Applicants (COBRA)	10-03	32, 63, 64
2122	Summary Decline Worksheet	10-06	61, 69
2128	Unconditional Guarantee	5-00	49
2129	Unconditional Limited Guarantee	5-00	49
2130	Modification of Note – Long Form – Add Borrower	5-00	90
2131	Modification of Note – Long Form	5-00	90
2132	Modification of Note – Short Form – Add Borrower	5-00	90
2133	Modification of Note – Short Form	5-00	90
2157AB	Auto-Decline Letter – Business	8-03	83, appendix 4
2157AH	Auto-Decline Letter – Home	8-03	83, appendix 4
2157B	Decline Letter – Business	8-03	83, appendix 4
2157H	Decline Letter – Home	8-03	83, appendix 4
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APPENDIX 2

ACRONYMS AND DEFINITIONS

This appendix contains acronyms and abbreviations used in this SOP. Acronyms and abbreviations used by other departments (i.e., FIT, Loss Verification, and Legal) generally do not appear in this appendix.

ACRONYMSA

"A"	Applicant
A/P	Accounts Payable
A/R	Accounts Receivable
AA/DA	Associate Administrator for Disaster Assistance
ACH	Automated Clearing House
ADLP	Assistant Director for Loan Processing
AAR	Average Annual Revenue
ACE	Active Corps of Executives
ALE	Alternate Living Expenses
ANA	Available Net Assets (for Business Credit Elsewhere Test Purposes)
ANW	Adjusted Net Worth
ARC	American Red Cross

B

"B"	Borrower
BAC	Business Assistance Center
B/E	Business/EIDL
BRC	Business Recovery Center
BFAT	Business Financial Analysis Tool
BFE	Base Flood Elevation

C

CA	Cash Available
CASAD	Cash Available to Service Additional Debt
CBR	Credit Bureau Report
CBRS	Coastal Barrier Resources System
CCL	Conditional Commitment Letter
CC&Rs	Conditions, Covenants and Restrictions

CD	Center Director
CDBG	Community Development Block Grants
CE	Credit Elsewhere
CET	Credit Elsewhere Test
CHRON	Chron Log
CF	Cash Flow
CFR	Code of Federal Regulations
CLA	Congressional and Legislative Affairs
COBRA	Coastal Barrier Resource Area
COE	Corps of Engineers (U.S. Army)
COGS	Cost of Goods Sold
CONUS	Continental United States
CPA	Certified Public Accountant
CSR	Customer Service Representative
CSC	Customer Service Center
<u>D</u>	
DAA/DA	Deputy Associate Administrator for Disaster Assistance
DCD	Deputy Center Director
D&B	Dun and Bradstreet
DCS	Data Communication System
DD	District Director
DCMS	Disaster Credit Management System
DECA	Decline-Automatic (FEMA)
DFO	Disaster Field Office
DLB	Disaster Loan – Business
DLH	Disaster Loan – Home
DO	District Office
DOB	Duplication of Benefits
DLOC	Disaster Loan Outreach Center
DRC	Disaster Recovery Center
<u>E</u>	
EOA	Equal Credit Opportunity Act
EEO	Equal Employment Opportunity
EI	Economic Injury
EIDL	Economic Injury Disaster Loan

EDP Extension of Disbursement Period

ELE Emergency Living Expenses

F

FAA Federal Aviation Administration

FAC Family Assistance Center

FAT Financial Analysis Tool

FCO Federal Coordinating Officer (FEMA)

FDIC Federal Deposit Insurance Corporation

FDM Fixed Debt Method

FEMA Federal Emergency Management Agency

FF Furniture & Fixtures

FHA Federal Housing Authority

FI Flood Insurance

FIA Flood Insurance Administration

FIRM Flood Insurance Rate Map

FIT Field Inspection Team

FMV Fair Market Value

FOC-E Field Operations Center-East

FOC-W Field Operations Center-West

FOIA Freedom of Information Act

FRB Federal Reserve Board

FSA Farm Service Agency

FTR Federal Tax Return

G

GAI Gross Annual Income

GM Gross Margin

GMI Gross Monthly Income

GP Gross Profit

GPM Gross Profit Margin

H

HA Housing Assistance (FEMA Rental Assistance and Home Repair Programs)

HFAT Home Financial Analysis Tool

HOA Homeowner's Association

HHS Department of Health and Human Services

HUD Department of Housing and Urban Development

I

IA	Individual Assistance (FEMA)
ICC	International Code Council
IG	Inspector General
IHP	Assistance to Individuals and Households Program (FEMA)
IIP	Increased Insurance Premium
INV	Inventory
IOM	Inverse Order of Maturity
IP	Injury Period
IPO	Initial Public Offering
IRA	Individual Retirement Account
IRM	Information Resource Manager (computer specialist)
IRS	Internal Revenue Service

J, K,

JFO	Joint Field Office
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L

LAA	Loan Authorization and Agreement
LAC	Local Assistance Center
LCD	Loan Closing Document
LHI	Leasehold Improvements
LLE	Limited Liability Entity
LO	Loan Officer
LP	Loan Processing
LV	Loss Verifier

M

MAFD	Maximum Acceptable Fixed Debt
M&E	Machinery & Equipment
MCM	Modified Contribution Margin
MFD	Monthly Fixed Debt
MH	Manufactured Housing
MREIDL	Military Reservist Economic Injury Disaster Loan
MSE	Major Source of Employment
MSPB	Merit Systems Protection Board

N

NAICS	North American Industry Classification System
NEMIS	National Emergency Management Information System
NCE	No Credit Elsewhere
NEC	Net Earnings Clause
NEHRP	National Earthquake Hazards Reduction Program
NFIP	National Flood Insurance Program
NFIRA	National Flood Insurance Reform Act
NP	Net Profit
NPSC	National Processing Service Center

O

OCONUS	Off Continental United States
ODA	Office of Disaster Assistance
OE	Office Equipment
OHA	Office of Hearings and Appeals
OIC	Officer-in-Charge
OIG	Office of Inspector General
OMB	Office of Management and Budget
ONA	Other Needs Assistance (FEMA)
OSO	Office of Security Operations

P

PA	Public Assistance (FEMA)
PASC	Personnel and Administrative Support Center
PCA	Production Credit Association
PDC	Processing and Disbursement Center
PDMLP	Pre-Disaster Mitigation Loan Program
PITI	Principal, Interest, Taxes and Insurance
P&L	Profit & Loss (Statement)
PMQD	Portfolio Management Query Display
PNP	Private Nonprofit
PP	Personal Property
Pre-LV	Pre-Loss Verification Review Process
PUD	Planned Unit Development

Q

QA	Quality Assurance
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R

RA	Regional Administrator
RE	Real Estate
RECON	Reconsideration of SBA's Decline Decision
RMA	Robert Morris Associates
RO	Regional Office
RUS	Rest of the United States (for GS pay level purposes)
RV	Recreational Vehicle

S

SBA	Small Business Administration
SBCC	Southern Building Code Conference
SBDC	Small Business Development Center
SCORE	Service Corp of Retired Executives
SecAg	Secretary of Agriculture Designation
SFHA	Special Flood Hazard Area
SLO	Supervisory Loan Officer
SLV	Supervisory Loss Verifier
SS	Social Security
SSA	Social Security Administration

T

TILA	Truth in Lending Act
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U

UP	Use of Proceeds
USC	United States Code
USDA	United States Department of Agriculture

V

VA	Veterans Administration
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W

WEP	Wage Earner's Plan (Chapter 13)
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X,Y,Z

YTD	Year to Date
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DEFINITIONS

RESERVED

APPENDIX 3

(paragraph 82)

REASONS FOR WITHDRAWAL OF APPLICATION**Withdrawal Code 51****Requested information was not furnished**

We have withdrawn your application from active consideration because you did not furnish the requested additional information necessary to process your loan application.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to show that our action was in error or that the withdrawal resulted from causes beyond your control.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 52**Applicant's Request – A change in plans**

We have withdrawn your application from active consideration based on your **(telephone/written/fax)** request of **(insert date)**. You stated that your plans have changed and the requested loan is no longer needed.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 53**Applicant's Request – No reason given**

We have withdrawn your application from active consideration based on your **(telephone/written/fax)** request of **(insert date)**.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 54

Applicant's Request – Due to availability of insurance or other recovery

We have withdrawn your application from active consideration based on your **(telephone/written/fax)** request of **(insert date)**. You stated that due to the availability of insurance or other recovery the requested loan is no longer needed.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 55

Applicant's Request – State basis for request

We have withdrawn your application from active consideration based on your **(telephone/written/fax)** request of **(insert date)**. You stated that the requested loan is no longer needed because _____

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 56**(Select Option A or Option B below)****Option A - Unable to verify property**

We have withdrawn your application from active consideration because we have been unable to gain access to the disaster damaged property for an on-site inspection.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must include your current telephone number, or the name and telephone number of a designated representative we can contact to schedule an appointment to verify your disaster losses.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Option B - Custom text**Insert Custom Text**

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 57**Consolidation of multiple applications**

We have received multiple applications and/or duplicate claims for damages caused from the same disaster declaration. We have consolidated all of your eligible disaster losses under one application and assigned it to a Loan Officer for processing. The remaining application(s) has been withdrawn from active consideration.

Withdrawal Code 58**Consolidation of related applications**

We have received multiple applications and/or duplicate claims for damages caused from related disaster declarations. We have consolidated all of your eligible disaster losses under one application and assigned it to a Loan Officer for processing. The remaining application(s) has been withdrawn from active consideration.

Withdrawal Code 59
IRS has no record

We have withdrawn your application from active consideration because we cannot document **(individual's or entity's name)** income. SBA uses Federal Income Tax Returns as its source for documenting income. In response to our inquiry of the Internal Revenue Service (IRS), they reported "no record found" for a filing of a tax return by **(individual's or entity's name)** for the year(s) _____.

When IRS records indicate that an individual or business has failed to file Federal Income Tax Returns, SBA's policy is to refer the matter to the **IRS** for review. Accordingly, we have referred your file to the **IRS**.

If you disagree with the IRS determination that no tax records were found for the year(s) referenced above, you may contact your local IRS office regarding this discrepancy. Your local IRS office can give you any necessary documentation to resolve this discrepancy.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Code 60—Character Eligibility Determination

60-a: Withdrawal of an otherwise approvable application

We have withdrawn your application from active consideration pending a formal character eligibility determination. It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. Therefore, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination.

You have the right to request reacceptance of your withdrawn application. In order to request reacceptance and begin a character eligibility determination, you must provide the information outlined below.

(Select Option A or Option B below)

Option A

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by **(name)**. Fingerprints may be taken at various county and state

agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 and Form 912 to the following address:

**U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243**

Option B

We are required to obtain fingerprints from (**name**) on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 to the following address:

**U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243**

To be sure that we consider all relevant information, also provide the following documentation:

1. A detailed narrative describing the circumstances of each event, including:
 - A. The incident date(s).
 - B. The city and state in which the incident(s) occurred.
 - C. The nature of the incident(s), including arrest, conviction, and description.
 - D. The penalties, such as fines, time served, parole, probation, etc.
 - E. The disposition (dismissal, sentence(s) served, etc.).
2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.

3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

This information must be received within six months of the date of this letter. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. Your application will remain inactive until a character evaluation is completed.

If you have any questions regarding this matter, please contact us at the number listed above.

**** 60-d: Decline (Insert in decline letter after reconsideration requirements)**

In addition to the reason(s) for decline explained above, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination. At this time, the character element of SBA's loan consideration has not been resolved. If you ask us to reconsider our decline decision, you must provide the additional information outlined below with your reconsideration request.

(Select Option A or Option B below)

Option A

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by **(name)**. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 and Form 912 to the following address:

**U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243**

Option B

We are required to obtain fingerprints from **(name)** on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 to the following address:

**U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243**

To be sure that we consider all relevant information, also provide the following documentation:

1. A **detailed narrative** describing the circumstances of each event, including:
 - A. The incident date(s).
 - B. The city and state in which the incident(s) occurred.
 - C. The nature of the incident(s), including arrest, conviction, and description.
 - D. The penalties, such as fines, time served, parole, probation, etc.
 - E. The disposition (dismissal, sentence(s) served, etc.).
2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.
3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

You must provide this information with your reconsideration request. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. If the reason(s) for decline can be overcome, we may proceed with the processing of your application only after the character evaluation is completed.

60-w: Withdrawal (insert in withdrawal letter after/reacceptance requirements)

In addition to the reason(s) for withdrawal explained above, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination. At this time, the character element of SBA's loan consideration has not been resolved. If you ask us to reaccept your application, you must provide the information outlined below with your reacceptance request.

(Select Option A or Option B below)

Option A

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by **(name)**. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. **Do not fold Form FD-258.** Please return the completed Form FD-258 and Form 912 to the following address:

U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243

Option B

We are required to obtain fingerprints from (**name**) on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. **Do not fold Form FD-258.** Please return the completed Form FD-258 to the following address:

U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243

To be sure that we consider all relevant information, also provide the following documentation:

1. A **detailed narrative** describing the circumstances of each event, including:
 - A. The incident date(s).
 - B. The city and state in which the incident(s) occurred.
 - C. The nature of the incident(s), including arrest, conviction, and description.
 - D. The penalties, such as fines, time served, parole, probation, etc.
 - E. The disposition (dismissal, sentence(s) served, etc.).
2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.
3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

You must provide this information with your reacceptance request. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. If the reasons for the withdrawal can be overcome, we may proceed with the processing of your application only after the character evaluation is completed.

Withdrawal Code 61**Applicant's Request – Due to market rate**

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date). You stated that the loan terms were not acceptable due to the interest rate.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- a. The request must be in writing.
- b. The request must be received by this office no later than six months from the date of this letter.
- c. The request must contain all significant information to overcome the reason for withdrawal.
- d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- e. (Optional text for additional items).

Withdrawal Code 65-w**Pre-Disaster Mitigation Loan – Approval - No funds available**

This responds to your recent request for assistance for a Pre-Disaster Mitigation Loan from the U.S. Small Business Administration (SBA). We approved your loan request on _____. However, all available funding for this pilot program has been exhausted and we are unable to disburse any loan funds at this time.

We want to assure you that if more funds become available, **your request will be given priority status, based on the original acceptance date of your application.** We will contact you before reaccepting your request to confirm if you wish to proceed. Please note that if more than six (6) months pass since SBA approved your request, we may require updated or additional financial information.

We regret our inability to be of assistance to you at this time. If you have any questions about this action, please contact our office at the above address or the toll free number.

** Home loan applicants declined for this coded reason are referred to FEMA for possible grant consideration only when SBA has determined that the applicant is also financially ineligible for a loan.

APPENDIX 4

(paragraph 83)

REASONS FOR DECLINE OF APPLICATION*** Decline Code 20**

Lack of repayment ability - Applicant's income below minimum income level for the family size (NOTE: Used in Summary Decline, Auto-Decline, and Pre-LV Review processes only.)

Your loan request indicates monthly household income of approximately \$(*Monthly income*) and a household size of (*household size number*) member(s). We conclude that there is no reasonable assurance that your household budget can support the additional debt which would result from a disaster loan.

*** Decline Code 21****Lack of repayment ability**

Our analysis of all the information provided with your loan application concluded your income is insufficient to repay a disaster loan in addition to your existing debts, living expenses, taxes, insurance, and other obligations.

Decline Code 22 (NOTE: Only for business physical loans with credit available elsewhere. Does not apply to nonprofits.)

Lack of ability to repay a disaster loan within a maximum three-year term

Federal law requires SBA to determine whether credit [based on available assets and uncompensated losses of the applicant(s)/principal(s)/affiliate(s)] in an amount needed to accomplish full disaster recovery is available from nongovernmental sources on reasonable terms and conditions without creating an undue financial hardship. The law calls this credit available elsewhere.

Disaster loans are taxpayer subsidized. Congress intended that applicants able to provide funding for their own recovery must receive disaster loans at a higher rate of interest in order to encourage applicants to seek nongovernment assistance. In the case of this disaster, that interest rate is ___ % for disaster business loans. Further, the law limits loans to businesses with credit available elsewhere to a maximum repayment term of three (3) years.

We determined through a comprehensive analysis of all the financial and credit information included with your application that you have credit available elsewhere. Our analysis indicated you could obtain financing from nongovernmental sources on reasonable terms in an amount sufficient to repair your disaster-damaged property.

Consequently, any loan we could offer must be at the higher interest rate and the three (3) year maximum term. We concluded your income is insufficient to repay the loan within the maximum term of three (3) years permitted by law.

Decline Code 23 (NOTE: This reason to be used where repayment ability is based on forecast rather than historical information.)

Inadequate cash flow to repay a disaster loan and meet other obligations

We carefully examined the forecasted revenues and expenses you provided to assess your ability to repay a disaster loan. We are unable to use those figures as a basis for repayment because (*cite specific reasons*) (e.g., are not reasonable when compared with industry averages).

Our analysis of all the information provided with your loan application concluded there is a lack of reasonable assurance your business can generate adequate cash flow to repay a disaster loan in addition to its existing debts, expenses, taxes, insurance, and other obligations.

Decline Code 24 (NOTE: Never use as only reason for decline.)

Excessive amount of debt relative to net worth

Our analysis of the financial information you submitted shows that the business' liabilities prior to the disaster substantially exceed either the assets of the business or the owner's investment. This unsatisfactory financial condition would not change even if SBA were able to approve a disaster loan in the amount of your eligible losses.

Decline Code 25 (NOTE: Never use as only reason for decline.)

Inadequate working capital even if SBA could approve a loan

The sole purpose of an Economic Injury Disaster Loan (EIDL) is to help a small business meet its working capital requirements during the disaster-affected period until normal operations resume. The amount of an applicant's economic injury eligibility cannot exceed the working capital needs the business and its owners could have covered if the disaster had not occurred.

Generally, we measure economic injury by comparing the gross margins generated by the business during the period affected by the disaster to those generated in similar, nondisaster periods. The differences show the disaster's financial impact on the business' operations. Next, we determine the amount of funds the business and its owners need until normal operations resume. Finally, we compare the disaster's impact on operations with the identified financial needs. The smaller of these two amounts is the business' maximum economic injury eligibility.

Our evaluation of the information you submitted with your application shows that the financial needs of the business and its owners substantially exceed the disaster's impact on its operations. We concluded that you could not have covered all of the business' working capital requirements even if there had not been a disaster. Because you do not have the resources to meet this working capital shortage, we are unable to offer you a disaster loan.

*** Decline Code 26**

Unsatisfactory history on an existing or previous SBA loan

Our records indicate that _____ (*insert name*) is named as a borrower/co-borrower/guarantor on an existing/a previous SBA loan, (*insert loan number*).

- Option 1. The loan is currently in a delinquent/liquidation/charged-off status.
- Option 2. The hazard/windstorm insurance requirements have not been maintained on this loan.
- Option 3. The loan has an unsatisfactory payment history.

As a result of this unsatisfactory performance, we are unable to offer you additional SBA loan assistance.

*** Decline Code 27**

Unsatisfactory history on a Federal obligation

We lack reasonable assurance that the applicant will comply with the terms of the loan agreement based on an existing or previous Federal debt, specifically_____.
(NOTE: *Cite the delinquent Federal loan or obligation.*)

*** Decline Code 28**

Unsatisfactory credit history

Our evaluation of your credit report and related information indicates that you have not complied with the terms of your prior debt obligations. As a result, we lack reasonable assurance of your willingness or ability to comply with the terms of a disaster loan. We based this decision on information obtained from Equifax, P. O. Box 740241, Atlanta, GA 30374-0241, (800) 685-1111.

*** Decline Code 29 (NOTE: Use for other than a credit bureau.)**

Unsatisfactory debt payment history

We carefully examined your history of paying debt obligations. Our evaluation indicated that you have not complied with the terms of your prior debt obligations. As a result, we lack reasonable assurance of your willingness or ability to comply with the terms of a disaster loan. We based this decision on _____ (*specify the nature of information.*).

You may submit a written request for the disclosure of the nature, not the source, of the information upon which we based the decline action. Your request must be received within 60 days from the date of this letter.

Decline Code 30 (NOTE: Use only when the verified loss is zero.)

No disaster-related damage

SBA disaster loans are available only for property damage directly caused by the declared disaster. Based on our on-site inspection of your property, we determined the (*disaster event*) did not cause damage to your property.

Decline Code 31**Economic injury is not substantiated**

The sole purpose of an Economic Injury Disaster Loan (EIDL) is to help a small business meet its working capital requirements during the disaster-affected period until normal operations resume. Economic injury is a change in the financial condition of a small business concern that is directly attributable to the effects of the declared disaster. This change in financial condition must result in the business being unable to meet its obligations as they mature or to pay ordinary and necessary operating expenses.

Generally, we measure economic injury by comparing the gross margins generated by the business during the period affected by the disaster to those generated in similar, nondisaster periods. The differences show the disaster's financial impact on the business' operations. Next, we determine the amount of funds the business and its owners need until normal operations resume. Finally, we compare the disaster's impact on operations with the identified financial needs. The smaller of these two amounts is the business' maximum economic injury eligibility. Economic injury disaster loans cannot exceed the financial requirements the business and its owners could have covered had there been no disaster.

Option A - (No needs)

Our analysis of the financial information provided with your application indicates you have been able to meet all financial needs attributable to (*declared disaster event*) through your own resources without undue hardship. Because there are no unmet financial needs, we cannot substantiate any eligible economic injury.

Option B - (Disaster Gross Margin Exceeds Normal)

Our analysis of the financial information you provided with your application revealed the gross margins generated during the period affected by the disaster exceeded your normal, nondisaster levels. As a result, we cannot substantiate any eligible economic injury.

Option C - (Custom Text)**Decline Code 32 (NOTE: Use only for EIDLs.)****Business activity is not eligible**

Economic Injury Disaster Loans (EIDL) are available only to a small business engaged in an eligible business activity. Business activity means the nature of the business conducted by the applicant.

When the applicant, together with any affiliates, conducts more than one business activity, we first determine the applicant's main business activity. Generally, the main business activity is the one that produces the most revenue. We then identify the business activity that was impacted by the declared disaster event. This is called the loss activity. Both the main activity and the loss activity must be eligible in order to be eligible for an EIDL.

In your case, the information you submitted with your application indicates the (**main/loss**) activity is _____. This is not an eligible business activity according to SBA regulations (*cite the regulation*).

Decline Code 33 (NOTE: Use only for EIDLs.)**Not eligible because the applicant is not a small business**

Federal law limits Economic Injury Disaster Loans (EIDL) to small businesses only. To be eligible for an EIDL, an applicant must not exceed the SBA size standard for its industry. For different industries, size standards are measured by either revenues or number of employees. The test is applied to the industry in which the applicant alone is primarily engaged. Additionally, if the applicant has any affiliates, it is also applied to the industry in which the applicant together with its affiliates is primarily engaged.

Based on our analysis of the information you provided, the (applicant/applicant together with affiliates) is primarily engaged in (*specify industry*). The applicant, (*insert business name*), does not meet the (adjusted size standard/size standard) of (*state the size standard*) for (*specify industry*). For this reason, we have concluded that the applicant does not meet the requirement to be a small business for this purpose. If you disagree with our decision, you may request a formal size determination by completing the attached SBA Form 355.

Decline Code 34 (NOTE: Use only for EIDLs.)**Credit is available elsewhere**

Federal law requires SBA to determine whether credit (**based on available assets and uncompensated losses of the applicant/principal/affiliates**) in an amount needed to accomplish full disaster recovery is available from nongovernment sources on reasonable terms and conditions without creating an undue financial hardship. The law calls this credit available elsewhere.

Disaster loans are taxpayer subsidized. Congress intended that applicants able to provide funding for their own recovery must do so and are not eligible for Economic Injury Disaster Loans (EIDL). We analyzed your loan application and supporting financial information to determine all your income, assets and debts. We concluded that (business/ owner(s)/ partners/ shareholders) has/have credit available elsewhere and is/are not eligible for EIDL assistance.

Decline Code 35**Not located in the declared disaster area****Option A - (For physical applications)**

To be eligible for SBA disaster loan assistance, the damaged property must be located within the area named in the disaster declaration. According to information in your application, your property is located in _____, which is not within the declared disaster area.

Option B - (For EIDL applications)

To be eligible for a SBA Economic Injury Disaster Loan (EIDL), applicants must be located within the area named in the disaster declaration. This means that the business must have a physical presence in the area named in the disaster declaration. An economic presence alone does not meet the location requirement.

After considering the information you presented in your application, we determined that you do not have a physical presence in the area named in the disaster declaration.

Decline Code 36 (NOTE: To be used for secondary homes, etc.)**Ineligible real property**

Federal regulations limit disaster loans to certain types of real property in order to avoid using taxpayer-subsidized funds for non-essential purposes. Disaster-damaged residential property is eligible for SBA assistance if the property is the applicant's primary residence or if it is a qualified rental property.

According to the information you provided, the damaged property is neither your primary residence nor a qualified rental property. Some applicants may have more than one residence; however, a disaster victim, for SBA disaster loan purposes, can only have one primary residence.

The following usually identifies a primary residence:

1. The applicant has filed for homestead exemption on the disaster damaged property for property tax purposes.
2. The address of the damaged property is used by the applicant for voting purposes.
3. The address of the damaged property is used to identify the school district to which the applicant's children are assigned.
4. The applicant uses the address of the damaged property on Federal Income Tax Returns.
5. The applicant uses the damaged property residence the greatest percentage of the year.
6. Other similar factors.

Decline 37**Ineligible personal property**

Some types of personal property are not eligible for SBA disaster loan assistance. This restriction is provided by Federal regulation in order to avoid using taxpayer subsidized funds for non-essential purposes. Examples of ineligible personal property are recreational vehicles, collectibles, cash, etc.

The damaged property for which you requested assistance is not eligible.

Decline Code 38**Not eligible due to recoveries from other sources**

SBA disaster assistance is available for disaster losses that are not fully compensated by insurance recoveries, grants, or other sources. According to our information, you received compensation for your disaster losses from (*your insurance company/FEMA/specify other*) in amounts that fully cover your eligible disaster damages.

Decline Code 39**Option A -****Not eligible due to failure to maintain flood insurance coverage on an existing SBA loan**

(Name of borrower or guarantor) is named as a **(borrower/guarantor)** on an existing SBA loan, *(insert loan number(s))*. The terms and stipulations of that loan agreement required *(name of borrower or guarantor)* to purchase flood insurance for the property located at *(specify address)*, and to maintain that coverage for the life of the loan.

Our analysis shows that the required flood insurance coverage on the existing loan was not in effect at the time of the disaster. As a result of the failure to maintain the required insurance coverage, you are not eligible for SBA disaster assistance.

Option B -**Not eligible due to failure to maintain required flood insurance on a loan from a federally regulated lender**

You are not eligible for SBA disaster loan assistance because you failed to meet the flood insurance requirement of your existing mortgage on the property located at _____ *(specify address)*. Your existing mortgage with _____, a financial institution that is federally regulated, required you to purchase and maintain flood insurance coverage. The National Flood Insurance Reform Act of 1994 prohibits SBA from providing disaster loan assistance to applicants that failed to comply with an existing **Federal** flood insurance requirement.

Our analysis shows that the required flood insurance coverage on your existing loan was not in effect at the time of the disaster. As a result of your failure to maintain the required insurance coverage, you are not eligible for SBA disaster assistance.

Option C -**Not eligible due to failure to maintain required flood insurance as directed by the Federal Emergency Management Agency (FEMA)**

You are not eligible for SBA disaster loan assistance because you failed to maintain flood insurance as a condition of a previous grant from the Federal Emergency Management Agency (FEMA). The National Flood Insurance Reform Act of 1994 prohibits SBA from providing disaster loan assistance to applicants that failed to comply with an existing Federal flood insurance requirement.

Our analysis shows that the required flood insurance coverage on your home was not in effect at the time of the disaster. As a result of your failure to maintain the required flood insurance coverage, you are not eligible for SBA disaster assistance.

Decline Code 40 (NOTE: This includes situations such as claimed business income not supported by FTRs, undeclared rental income, income from hobbies, business ventures not in the organizing stage, etc.)

Not a qualified business

Option A – Business

To be eligible for SBA disaster loan assistance, the applicant must be a qualified business. All disaster business applicants must provide documentation, such as Federal Tax Returns or other evidence to establish their operation as a qualified business.

Based on our analysis of the information provided with your application, we are unable to establish that a qualified business existed at the time of the disaster.

Option B – Rental

To be eligible for SBA disaster loan assistance, the disaster damaged property must be a qualified rental. All disaster business applicants must provide documentation, such as Federal Tax Returns or other evidence to establish their operation as a qualified rental.

Based on our analysis of the information provided with your application, we are unable to establish that a qualified rental existed at the time of the disaster.

Decline Code 41

Refusal to pledge available collateral

Collateral is required for the proposed disaster loan, and SBA determines the best available collateral to secure the loan. If an applicant offers other collateral, we try to accommodate their request. However, SBA makes the final determination of what collateral will best protect the government's interest. SBA may decline a loan request if the applicant refuses to pledge available collateral.

Our review of the information submitted with your application indicates that you have collateral available to secure the proposed loan, but you have refused to pledge the collateral SBA requested.

**** Decline Code 42**

Not eligible due to delinquent child support payments

Federal law prohibits SBA from approving a disaster loan to an applicant who is more than sixty (60) days delinquent on child support obligations. These obligations include administrative orders, court orders, and agreements requiring the payment of child support.

The information available to us indicates that you have a child support obligation that is delinquent in excess of sixty (60) days.

**** Decline Code 43****Not eligible due to character reasons**

To be eligible for SBA disaster loan assistance, an applicant must be of good character. In cases where the applicant is a corporation, partnership, or limited liability entity, the character issue extends to the principals of the business.

SBA has determined that (*insert name of individual*) does not meet SBA's character standards. This decision is based upon the Statement of Personal History, related documents submitted with the application, and government record checks.

Decline Code 44I**Lack of repayment ability – Below minimum income level for the family size based upon the applicant's income alone**

(NOTE: Used in Summary Decline, Auto-Decline, and Pre-LV Review processes only)

We examined your loan application and supporting financial information to establish your income and debts. We based our analysis on your income only, because you informed us that your spouse or the co-owner chose not to be an applicant for the disaster loan. Your loan request indicates monthly household income of approximately \$(*Monthly income*) and a household size of (*household size number*) member(s). We conclude that there is no reasonable assurance that your household budget can support the additional debt, which would result from a disaster loan.

Decline Code 44R**Lack of ability to repay a disaster loan based upon the applicant's income alone**

(NOTE: Used in Summary Decline, Auto-Decline, and Pre-LV Review processes only)

We examined your loan application and supporting financial information to establish your income and debts. We based our analysis on your income only, because you informed us that your spouse or the co-owner chose not to be an applicant for the disaster loan. Your loan request indicates monthly income of approximately \$(*Monthly income*) and monthly payments of approximately \$(*Monthly Debts*). This leaves \$(*Monthly income – monthly debts*) to cover monthly living expenses, taxes, insurance, etc. for your household of (*household size number*) member(s). Therefore, we conclude that there is no reasonable assurance that your budget can support the additional debt, which would result from a disaster loan.

*** Decline Code 45****Not eligible due to an outstanding judgment lien for a Federal debt**

Federal law prohibits SBA from approving a disaster loan to an applicant who owns property that is subject to an outstanding judgment lien for a debt owed to the United States. The information available to us indicates that the United States placed a judgment lien on the property you own at (*specify the address*) for a previously unpaid Federal debt owed to (*cite the Federal creditor*).

Decline Code 46**Option A-****Agricultural enterprises are not eligible**

By law, agricultural enterprises are not eligible for disaster assistance from SBA. The law makes SBA disaster loans available to homeowners, renters, nonfarm businesses, and private nonprofit organizations.

The law defines agricultural enterprises as those businesses that are engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

According to the information provided with your loan application, your business meets the definition of an agricultural enterprise and is not eligible for SBA disaster assistance. You may wish to contact the U.S. Department of Agriculture for information regarding their disaster recovery programs.

Option B -**Members of a fishing crew do not qualify as an eligible small business concern**

To be eligible for an Economic Injury Disaster Loan (EIDL), an applicant must be an independently owned and operated small business concern. The owners must have a substantial business risk resulting from investing in facilities or equipment, and must incur significant expenses regardless of whether the operation generates a profit. The owner(s) must share in the risk of both the profits and the losses.

Your application indicates that at the time of the disaster you were a crew member on a fishing vessel owned by another party. As a crew member, you had no liability for trip expenses, vessel payments, or other fixed costs that must be paid, even if the catch did not cover the trip's expenses. Because you do not have a substantial business risk, you do not own and operate an eligible business concern.

Option C -**Not eligible due to property being located in a Coastal Barrier Resource Area**

Federal law prohibits SBA from approving a disaster loan for any purpose within a Coastal Barrier Resource Area (COBRA) as defined by the Department of Interior, Fish and Wildlife Services.

Our analysis indicates that your disaster damaged property is located within a COBRA and is not eligible for SBA disaster assistance.

Option D -

Custom Text

Decline Code 65D – Pre-Disaster Mitigation Loan Program

We have thoroughly reviewed your recent application for a Pre-Disaster Mitigation Loan from the U.S. Small Business Administration (SBA). Although we made every effort to approve your loan request, we are unable to do so for the following reason(s):

(Select either Option A, B, C, D, or, E below)

Option A:

The mitigation proposal you submitted is not reasonable in terms of cost for the following:

- (state reason)

Option B:

The mitigation proposal you submitted is not reasonable in terms of accomplishing the desired purpose because of the following:

- (state reason)

Option C:

The total cost of the mitigation project exceeds the Pre-Disaster Mitigation Loan program limit of \$50,000 and you have been unable to provide adequate documentation for funding the additional project cost. Specifically,

Option D:

Insert custom verbiage to address eligibility issues for PDMLP only.

Option E:

Insert custom verbiage.

* Home loan applicants declined for these coded reasons are referred to FEMA for possible grant consideration.

** Home loan applicants declined for these coded reasons are referred to FEMA for possible grant consideration only when SBA has determined that the applicant is also financially ineligible for a loan.

APPENDIX 5

(paragraph 88)

CONDITIONAL COMMITMENT LETTER (CCL) CODES**NOTE: Only the underlined information is entered for the CCL.**Code

- RD-01 A copy of the deed to real estate located at (street address) reflecting ownership in the name of (owner's name) that includes a complete legal description
- RD-02 A copy of the current vehicle registration to your (vehicle description, including year, make, and model).
- RD-03 A copy of the title or manufacturer's Certificate of Origin to your (manufactured home description, including year, make, and model).
- RD-04 A copy of the lease or rental agreement (or other proof of occupancy) to (street address).
- RD-05 A copy of the Certificate of Documentation or Registration to (vessel description, including name, length, and home port).
- RD-06 Deleted.**
- RD-00 Customized Text.

APPENDIX 6

RESERVED

APPENDIX 7

RESERVED

APPENDIX 8

DISASTER CREDIT MANAGEMENT SYSTEM (DCMS)

DCMS is a web-enabled system that supports all SBA's disaster loan making functions, from managing disaster information to transferring fully disbursed accounts to DCS for servicing with the following capabilities:

- Secured, web-enabled, standardized means for nationwide processing for work anywhere, anytime
- Electronic loan processing
- Electronic case files for secured information sharing and electronic records storage
- Automated interfaces to FEMA's NEMIS, credit bureaus, and DCS for efficiencies in day-to-day work
- Automated internal workflow to move applications and accounts through loan processing and account management
- Automated support for loan activities including decision making, tracking, and document preparation

DCMS is a web-enabled electronic case file system that allows user access based on delegated responsibility. There are over 50 distinct roles in the system including:

- a. Customer Service Representative (CSR) has read only access to all screens.
- b. Loan Officer 1 (LO 1) can process Home loans including loan modifications. SLO 1, 2, and 3 have authority to review these case files.
- c. Loan Officer 2 (LO 2) can process Home, Business/EIDL (Phase 1) and Pre-Disaster Mitigation loans including loan modifications. SLO2 and 3 have authority to review these files.
- d. Loan Officer 3 (LO 3) can process Home, Business/EIDL (all phases), Pre-Disaster Mitigation, Non-Profit, MREIDL, and Stand Alone EIDL loans including loan modifications. SLO 3 has authority to review these case files.

DCMS allows the movement of applications and accounts from inquiry through transfer to servicing. All case files must be assigned to a specific case manager on the account side of DCMS. This will enhance customer service to disaster victims and establish accountability of all case files.

- a. Application Processing.
 - (1) Pre-Application has the following objectives:
 - (a) Provide early customer service by responding to inquiries, conducting interviews, and follow up as needed.
 - (b) Capture data about the pre-applicant to provide a tracking from the moment of first contact. On Presidential declarations, the Pre-Application record is generated through the download of FEMA registration information.

- (c) Determine if the applicant meets eligibility requirements before issuing an application.
 - (d) Identify Summary Declines
 - (e) Provide a follow-up with registrants if an application has not been received.
- (2) Application Entry has the following objectives:
- (a) Record all applications received into the system.
 - (b) Screen all incoming applications to ensure they are acceptable.
 - (c) Prevent duplicate applications.
 - (d) Identify companion and associated applications.
 - (e) Identify Auto-Declines.
- (3) The Field Inspection Team and the PDC Loss Verification Department have the following objectives:
- (a) Assign loss verification actions to Loss Verifiers.
 - (b) Have the Loss Verifiers complete their electronic verification reports, and submit for supervisory review.
- (4) Application Processing has the following objectives:
- (a) Process all loans within policy guidelines that dictate eligibility, repayment and other criteria.
 - (b) Provides the Financial Analysis Tool (FAT) to enable the Loan Officer to determine loan eligibility dollar amounts and repayment. This tool is customized for home (HFAT) and business (BFAT) calculations.
 - (c) Document loan decision.
 - (d) Submit for SLO review.
- (5) Legal Department Review has the following objectives (for secured approvals):
- (a) Review the proposed loan for issues of eligibility with regard to SOP compliance and the Law.
 - (b) Ensure the proposed loan complies with appropriate laws and regulations.
 - (c) Create a document checklist identifying the required loan closing documents.
 - (d) Provide an orderly and efficient flow for the correction of errors and omissions.
- (6) Obligating (formerly known as funding).

b. Account Processing includes:

(1) Closing Process.

- (a) Review approved loan accounts and initiate the preparation of the loan closing documents.
- (b) Determine whether a partial or full set of loan closing documents should be generated.
- (c) Prepare and send loan closing documents to borrowers.
- (d) Document scheduled appointments for borrowers to close their loans.
- (e) Conduct the closing and receive loan closing documents.

(2) Disbursements.

- (a) Determine if disbursement is warranted based on documentation submitted.
- (b) Notify the borrower of any impediments to disbursements.
- (c) Process and confirm Automated Clearing House (ACH) enrollment for disbursements.
- (d) Order and schedule disbursements of loan funds in DCMS and DCS.
- (e) Ensure adequate procedural and security safeguards.
- (f) Ensure that all disbursements are supported by legally sufficient documents.

(3) Portfolio Maintenance.

(4) Loan Modifications.

- (f) Process the loan modification(s) within the loan policy guidelines that dictate eligibility, repayment ability, and other processing criteria.
- (g) Determine which, if any, loan modification should be approved.
- (h) Determine the level of review required based on the loan type and modifications being made to it.
- (i) Automate most transfer of modified information between DCMS and DCS.

(5) Transfer to Servicing.

APPENDIX 9

RESERVED

APPENDIX 10

(paragraph 68)

MILITARY RESERVIST ECONOMIC INJURY DISASTER LOANS (MREIDL)POLICIES AND ELIGIBILITYAUTHORITY FOR MILITARY RESERVIST ECONOMIC INJURY DISASTER LOANS (MREIDLs)

The Military Reservist Economic Injury Disaster Loan Program was authorized by Public Law 106-50, enacted on August 17, 1999. The Military Reservist Economic Injury Disaster Loan regulations were published in the Federal Register (Vol. 66, No. 143) on July 25, 2001. The program was effective August 24, 2001 and applies to military conflicts occurring on or after March 24, 1999. SBA will make a low interest, fixed rate loan to a small business employing a military reservist if the reservist is called up to active military duty during a period of military conflict, and he or she is an essential employee critical to the success of the business's daily operation whose call-up has caused or will cause the business substantial economic injury. The interest rate on a Military Reservist EIDL will be 4 percent per annum or less. SBA will publish the interest rate quarterly in the FEDERAL REGISTER.

The following address differences from our existing economic injury program.

- a. **Declaration** – The Centers will not receive the standard declaration paperwork for this program nor will we regularly publish MREIDL declaration information in the Federal Register.

One declaration number will cover all 50 states and territories.

- b. **Screening** – All applications will be entered into the DCMS Pre-Application Entry and Application Entry Processes.

Use the "Declaration #" that is in effect as of the date the application was received, not the date of the essential employee's activation orders.

The filing period begins the date the essential employee receives their official call-up orders and ends 90 days after the date the essential employee is discharged or released from active duty.

The filing requirements also include a concurrence from the Reservist that they perform duties that are essential to the operation of the small business. As MREIDL applications may be filed while the Reservist is away on duty, the person that has the Reservists power of attorney can make the certification, or application if the Reservist is the owner of the applying small business (13 CFR §123.505).

The additional MREIDL filing requirements should be self-explanatory.

- c. **Processing of Applications** – As in our current EI program, eligibility is limited to non-agricultural small businesses that do not have credit available elsewhere. Additional exclusions from program eligibility are consistent with our current EI program and are included in §123.502 of the new regulations. All applications under this program should be processed using Phase **II**. For the MREIDL, the **incident** period would coincide with the activation of the essential employee and would end when they are released from active duty status.
- d. **Interest Rates** – The interest rate to be assigned to MREIDL approvals changes quarterly. However, once the appropriate interest rate is assigned to an approved MREIDL loan, it remains fixed. The proper interest rate to be applied to any MREIDL loan is SBA’s published EIDL interest rate at the time the MREIDL case file is approved.
- e. **Essential Employee** – an individual (whether or not the owner of the small business) whose managerial or technical expertise is critical to the successful day-to-day operations of the applicant small business.
- f. **Period of Military Conflict** – is (1) a period of war declared by Congress, or (2) a period of national emergency declared by Congress or the President, or (3) a period of contingency operation. A contingency operation is designated by the Secretary of Defense as an operation in which our military may become involved in military actions, operations, or hostilities (e.g., peacekeeping operations). Please note that a period of military conflict **does not include** instances when the Governor may activate the Guard as a result of a disaster event.
- g. **Loan Closing Documents** – The LAA does not reference disaster damage (both secured and unsecured) but identifies the loan as an MREIDL.

As the small business owner(s) must certify that the essential employee will be offered the same or a similar job upon their return from active duty, **the following stipulation (OC-20) should be included in every MREIDL:**

OC-20: “Borrower certifies that the essential employee will be offered the same or a similar job upon the employee’s return from active duty.”

- h. **Disbursements** – SBA will disburse the funds in quarterly installments, unless the loan officer specifies otherwise in the LAA. Generally, we should make one disbursement unless there is a sound business reason to disburse the loan in increments. If the loan officer decides to disburse serially, they should use **UP-61** (Working Capital with Periodic Disbursement) and make subsequent disbursements based on the small business’s continued need as demonstrated by comparative financial information. Approximately 30 days before the next scheduled disbursement, the PDC will request current financial information (including balance sheets and profit and loss statements) from the borrower. A loan officer is to review the updated financial information and make an assessment as to the continued need for MREIDL funds prior to authorizing additional disbursements.

APPENDIX 11

RESERVED

APPENDIX 12

(paragraph 59)

SAMPLE INCOME TEST TABLE

SBA MINIMUM INCOME Levels for Disaster Home/Renter Loan Consideration

(Households with income below these levels are referred

directly to IHP by FEMA Customer Service Representatives.)

These tables do not apply to households with self-employment income.

**Poverty Income Guidelines for the
48 Contiguous States and the District of Columbia**

<u>Household Size</u>	<u>\$\$Minimum Income Level</u>		
	<u>Week</u>	<u>Month</u>	<u>Year</u>
1	393	1,702	20,420
2	395	1,711	20,535
3	495	2,146	25,755
4	596	2,581	30,975
5	696	3,016	36,195
6	796	3,451	41,415
7	897	3,886	46,635
8	997	4,321	51,855
For each household member over 8, add	100	435	5,220

NOTE: This table is as of 10/01/07. Tables are updated at the beginning of the fiscal year. DCMS uses the Income Test tables based on when the business rules for the application are run and not based on the declaration date of the disaster.

APPENDIX 13

(paragraph 109)

CANCELLATION CODESAgency Cancellation

- C10. Failure to complete and return all loan closing documents.
- C11. Failure to satisfy all terms and conditions of the loan.
- C12. Adverse change. - IHP referral.
- C13. Adverse change. - Other.
- C14. Subsequent recoveries exceed verified loss.
- C15. Did not need all the funds. – (Agency Decision)
- C16. Other reasons. – (Agency Decision)

Cancellation at Borrower's Request

- C20. Adequate recovery from other sources.
- C21. Reluctant to incur additional debt.
- C22. Dissatisfied with loan terms and conditions.
- C23. Dissatisfied with insurance requirements.
- C24. Unwilling to pledge collateral.
- C25. Did not need all the funds. – (Borrower Decision)
- C26. Other reasons. – (Borrower Decision)
- C27. Dissatisfied with loan interest rate (market rate). – (Borrower Decision)

APPENDIX 14

(paragraph 72)

FEES AND COMPENSATION OF REPRESENTATIVES1. GENERAL

An applicant may use the assistance of an attorney, accountant, packager, engineer, architect, appraiser, or other representative to aid in preparing an application and helping an applicant obtain a loan. SBA will allow the payment of reasonable fees or other compensation for services performed by these representatives on behalf of the applicant. No fees or compensation will be reimbursed or paid by SBA to any representative.

Section 13 of the Small Business Act requires an applicant to inform SBA of the payments made to such representatives. This is done by filing SBA Form 159D "Compensation Agreement."

2. DETERMINING REASONABLENESS OF FEES

Reasonable fees are those which are for necessary and appropriate services actually performed, or for expenses actually incurred, and are comparable to those charged by other agents in that geographical area. The ADLP or designee should review the fee information to determine if the fees are reasonable. A number of factors should be considered, including, but not limited to:

- a. The nature of the services rendered,
- b. The time, effort, and skill required,
- c. The complexity of the case,
- d. The experience and skill of the representative.

What is reasonable will vary by locality. Rate schedules published by professional organizations may serve as a guide. A substantial fee is not necessarily unreasonable, if it reflects the services actually rendered.

3. PERMISSIBLE FEES AND COMPENSATION

Permissible fees and compensation include, but are not limited to:

- a. Fees for legal, accounting, packaging, engineering, architectural, appraisal, and other technical services actually rendered on behalf of the applicant.
- b. Fees for preparing and filing a loan application, for closing and obtaining disbursement of the loan, and for conducting business with SBA on behalf of the applicant, as described in 13 CFR §103.1.

- c. Reimbursement for expenses incurred in the course of performing services relating to the SBA loan, such as filing or recording fees.

Fees based on a percentage of the loan amount can be reasonable in some cases, depending on the circumstances of the case and the services actually rendered.

4. PROHIBITED FEES AND COMPENSATION

Prohibited fees and compensation include, but are not limited to:

- a. Fees contingent on the receipt of any benefit from SBA.
- b. Finder's, broker's or placement fees charged solely for providing information or SBA materials to the applicant, or for "connecting" the applicant to the SBA program.
- c. Fees deemed by SBA to be unreasonable for the services actually performed.
- d. Reimbursement for expenses deemed by SBA to be unnecessary in connection with the SBA loan.
- e. Fees for the use or attempted use of improper influence in obtaining or attempting to obtain an SBA loan. Such improper influence includes:
 - (1) Attempting to influence an SBA employee by gifts, bribes, or other unlawful or unethical activity, with respect to any matter involving SBA assistance.
 - (2) Implying or stating that the work to be performed in connection with an SBA loan will include the use of political or other special influence with SBA.
- f. Fees for unlawful or unethical activities as defined in 13 CFR §103.4.

Persuasion by argument or by the presentation of contentions or facts dealing with the merits of a case is NOT considered improper influence.

5. FEES DETERMINED TO BE UNREASONABLE

The CD/PDC or designee should make the final determination that compensation is unreasonable, based on advice from the ADLP or Center Counsel. Where the CD/PDC determines that compensation is unreasonable, the representative must:

- a. Reduce the charge to an amount SBA deems reasonable;
- b. Refund any sum in excess of the amount SBA deems reasonable; and
- c. Refrain from charging or collecting, directly or indirectly, an amount in excess of the amount SBA deems reasonable.

If the representative's compensation is found to be unreasonable, remedial action should be directed to the representative rather than the applicant. Violations of SBA regulations or policy by a representative are not a reason to decline or delay the applicant's accepted loan request. If a loan is approved, the PDC may prohibit the applicant from using SBA funds to compensate the representative over the amount deemed reasonable by including the following stipulation in the LAA.

OC-00 "Borrower will not use Loan funds in excess of \$_____ to pay a Representative (attorney, accountant, packager, etc.) in connection with applying for or closing this loan. If total compensation exceeds **(\$500 / \$2,500)**, Borrower's Representative must sign and submit a Compensation Agreement (SBA Form 159**D**) and an itemized schedule showing each date services were performed, time spent each day, and description of services rendered on each day listed. Borrower will not make any payment that exceeds \$_____ without prior written approval of SBA of the services rendered and amounts charged."

6. SUSPENSION OR REVOCATION OF REPRESENTATIVE'S PRIVILEGE TO APPEAR BEFORE SBA.

13 CFR §103.3 describes the authority that rests with the Administrator or designee to take final action to suspend or revoke that privilege. 13 CFR §103.4 describes acts that could justify such a decision.

APPENDIX 15

(paragraphs 63, 64, and 68)

IRS FORM 8821TRANSCRIPT VERIFICATION PROCEDURES

SBA requires all applicants to submit an executed IRS Form 8821 “Tax Information Authorization” with the disaster loan application. IRS Form 8821 allows SBA to obtain transcripts of tax returns, as well as to confirm payment of workout agreements, verify the status of tax liens, and obtain other specified tax-related information.

All loan packages issued to potential applicants must include the current IRS Form 8821 with the cover sheet, which provides instructions and disclosure information. The current IRS Form 8821 and cover sheet will be distributed annually by the Office of Disaster Assistance (ODA).

1. Screening

The applicant must provide an executed IRS Form 8821 (designated hereafter as “8821”) for each individual or business concern for which Federal **Income** Tax Returns (FTRs) are required.

If the applicant does not provide an executed 8821 for each required individual/concern, during screening the application should be considered “unacceptable” in accordance with SOP 50 30 **6**.

During processing, if the Loan Officer determines additional 8821s are required, they should be requested using a **7**-day letter.

2. Obtaining IRS Transcripts

Upon receipt of the executed 8821, review the form for completeness and designate the required information as specified in Module 5 of the Loan Officer’s Training Modules (LOTM). You must obtain transcripts of the most recently filed **FTRs** for:

- Applicants: 1 year;
- Business applicants and affiliates: As specified on SBA Form 5.

You may obtain transcripts for additional years as needed.

NOTE: In areas that do not use FTRs, such as commonwealths, territories, or U.S. possessions, we require comparable documentation.

Information on the appropriate years for which 8821 information should be required, will be updated annually by ODA.

IRS Form 8821 is valid for 60 days from the date of the applicant's signature. If additional transcripts are required after the expiration of the form, a new 8821 must be obtained from the applicant.

3. Tax Filing Requirements

For the purposes of determining tax filing compliance *only*, SBA uses IRS filing requirements to determine whether an individual or business concern is required to file a FTR.

- a. Individuals (IRS Form 1040 tax filers): IRS annually establishes minimum income levels based on age, marital status, and filing status. IRS filing requirements for individuals are updated yearly by the Office of Disaster Assistance.

IRS filing requirements are based on gross income, which IRS defines as "all income you receive in the form of money, goods, property, and services that is not exempt from tax." Social security income and tax-exempt pension income are excluded. Most forms of taxable income are included for this purpose. For rental and self-employment income IRS provides the following guidelines:

- (1) Rental Income: Gross rents should be included in the calculation of gross income. Rental income is not considered self-employment income for this purpose. For further information on rental income, see IRS Publication 527, "Residential Rental Property."
- (2) Self-Employment Income: Net earnings from a sole proprietor, independent contractor, or partner in an informal partnership should be included in the calculation of gross income. Self-employed individuals must file if their *net earnings* from self-employment are \$400 or more, if their *gross income* meets the minimum filing requirement, or if they meet any other filing requirement in the IRS Form 1040 instructions. For further information, see IRS Publication 334, "Tax Guide for Small Business."

If an individual does not meet the minimum filing requirement for their age and filing status, they are not required to file, even if they have some rental income, or self-employment income less than \$400.

- b. Corporations: All domestic corporations (including those in bankruptcy) must file whether or not they have taxable income (unless exempt under IRS Code §501). A corporation must file a FTR unless it has been dissolved. Generally, the 8821 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer, and (4) any person authorized to access information under Internal Revenue Code 6103(e). For further information on corporations, see IRS Publication 542, "Corporations."

- c. Partnerships: A partnership is an unincorporated organization with two or more parties who carry on a trade, business, financial operation, or venture and divide its profits. A written partnership agreement may exist but is not required. A partnership must file a tax return unless it neither receives gross income nor pays or incurs any amount treated as a deduction or credit for Federal tax purposes. Generally, partnerships are required to file IRS Form 1065, although in some instances the partners may report the partnership income on their personal FTRs. The 8821 must be signed by a partner.
- d. Limited Liability Entities (LLE): If a business concern is formed as a limited liability entity under state law, it may be treated as a sole proprietorship, a partnership or a corporation. An LLE can file a 1040 (Schedule C), 1065 (partnership) or 1120 (corporation). Tax filing requirements are determined by the type of entity. For example, if the LLE is organized as a corporation, it would generally file IRS Form 1120 and is governed by the 1120 filing requirements. The 8821 must be signed by a member.
- e. Nonprofits: A nonprofit organization which is tax-exempt under IRS Code § 501 is generally required to file IRS Form 990, unless its gross annual receipts are less than \$25,000. In addition, certain churches and religious organizations, as well as some other organizations, are not required to file. For a current list of organizations exempt from filing, as well as additional filing requirements and other information on nonprofits, refer to IRS Publication 557, **“Tax Exempt Status for Your Organization.”**
- f. U.S. Territory Residents: U.S. Territory Residents may not be required to file FTRs. Each Center should refer to IRS Publication 570, “Tax Guide for Individuals with Income from U.S. Possessions” to determine if a disaster loan applicant is required to file with the IRS. If IRS filing is not required, establish proof that comparable documents, such as territorial tax returns, have been filed.

4. Determining Filing Compliance

If the IRS indicates that no record of filing for one or more requested years was found, you must determine whether the taxpayer was exempt from filing and, if so, the basis for the exemption. Clearly document the case file and the LOR accordingly.

If the taxpayer was exempt, obtain alternate documentation of income in accordance with SOP 50 30 6, appendix 26, ¶ 2. If the taxpayer was required to file but has not done so, and no current extension is in place, withdraw the application using Code 59. The case file should be forwarded to the ADLP (or designee) for referral to the **IRS**.

In certain cases, a “No Record Found” response may be justified even if the applicant/concern is required to file. These include:

- a. For the current tax period: Although rare, this could occur if a business operates on other than a calendar year. Obtain current financial information as available.
- b. For the previous tax period, for which the filing period is still open (e.g., prior to April 15), or has closed and the IRS indicates that the returns may not yet be reflected in the IRS database: Obtain current financial information (for wage earners: W-2, pay stub, employer confirmation. For businesses: year end and current (90 days) financial statements). If the filing deadline has passed and no return has been filed, you must determine whether the taxpayer has a current valid extension.
 - (1) For the initial **six month** extension (for example, April 16 to **October 15** for 1040 returns due April 15) the IRS typically does not acknowledge the extension request. You should generally accept the taxpayer's verbal statement that the automatic extension has been requested **and chron the conversation**.
 - (2) For subsequent extensions, you must obtain a copy of the IRS approval of the extension request.

Current filing and extension information should be determined based on the IRS instructions for the appropriate tax return (available on the IRS website).

NOTE: Members of the armed forces serving in a combat zone or qualified hazardous duty area may be eligible for certain additional extensions. Refer to IRS Publication 3: Armed Forces Tax Guide for specific information.

If a "No Record Found" response is justifiable and current financial information is obtained, you must also obtain transcripts for previous tax years as required in 2 above.

5. OIG Referral

SBA policy requires that the following cases be referred to the Office of the Inspector General (OIG) for possible action **when**:

- a.** There is a material discrepancy, which the applicant cannot justify, between the IRS transcript and the applicant-provided copies of the returns;
- b.** The applicant/representative clearly indicates that income was purposely understated or overstated; or
- c.** SBA believes there may be provable fraud.

In the case of an OIG referral, home loan **applicants** will not be referred to the Individuals and Households Program (IHP). For additional information about OIG referrals, see paragraph 10.

6. Processing

Upon receipt of the requested tax transcripts, process the case file using normal procedures. If the applicant provides copies of the FTRs, compare the IRS transcripts to the applicant copies. If there are no material differences, you may use the information from either source to complete processing.

If material differences exist, such as a significant difference in the amount of income reported, processing should be completed to the extent possible, and the case file should be declined using decline code 46 (Policy Reasons—Custom Wording) as well as for any other appropriate reasons. The custom letter should state that:

“There are significant discrepancies between the information in your case file, including any tax information you provided, in comparison with that supplied by the Internal Revenue Service, for the tax year xxxx.”

Whether a material difference exists should be determined using the standard Rule of Two procedures.

7. Reacceptance

If an application has previously been withdrawn, code 59, we will consider reaccepting the application if:

- a. The applicant provides the information to establish that they were exempt from filing; or
- b. The applicant provides a current 8821 *and* all necessary transcripts are obtained from the IRS; or
- c. The applicant provides proof of filing, such as a copy of the FTR stamped and dated “Received by the IRS.”

8. Reconsideration

- a. Screening Declines, Auto-Declines, and Pre-LV Review Declines: If an applicant requests reconsideration of a Screening Decline, Auto-Decline, or Pre-LV Review Decline, the 8821 should be processed. If you determine that the applicant is not in tax compliance, withdraw the case file using code 59 and forward it to the ADLP or designee for referral to the IRS. As a result of the withdrawal, FEMA will be notified of the action, and may seek reimbursement of IHP funds previously awarded.
- b. Processing Declines: If the application has previously been declined code 46 for material differences between the IRS Transcripts and the applicant’s returns, the application may be reconsidered if the applicant provides a satisfactory explanation of the discrepancy.

APPENDIX 16

(paragraph 87)

CATALOG OF OPTIONAL LOAN AUTHORIZATION TEXT

This appendix is reserved for the Catalog of Optional Loan Authorization Text for disaster loans (dated 04-06). All stipulations and conditions used in the LAA are included in the catalog.

Place your copy here for reference.

APPENDIX 17

RESERVED

APPENDIX 18

RESERVED

APPENDIX 19

RESERVED

APPENDIX 20

(paragraphs 125 and 127)

INSTRUCTIONS FOR COMPLETING THE
ECONOMIC INJURY DISASTER LOAN (EIDL) WORKSHEET

The **EIDL Worksheet** allows for a great amount of detail when appropriate. You complete it only to the extent necessary to make your recommendation.

1. **WHEN TO USE THE EIDL WORKSHEET**

For Phase I and Phase II analysis, answer the two questions regarding Economic Injury eligibility in the Eligibility Tab of the Business Financial Analysis Tool (BFAT). Then complete all sections of the EIDL Worksheet as needed in the EIDL Tab.

2. **USE AND APPLICABILITY OF THE PHASE II EIDL WORKSHEET**

Section A, Injury Period Analysis. Use to **indicate** the time period the business is affected by the disaster.

Section B, Injury Analysis. Use to measure the effects of the disaster on the overall financial condition of the business.

Section C, Needs Analysis. Use to identify the necessary cash outlays, which the business will be unable to fund due to the disaster.

Section D, Remaining Essential Needs Summary. Use to summarize the necessary cash outlays and identify any extraordinary items, which the business will be unable to fund due to the disaster.

Section E, Conclusions of EI Analysis. Use to summarize the analysis and set the loan amount.

3. **COMPLETION OF THE EIDL WORKSHEET**

Eligibility Tab in BFAT EIDL Worksheet.

- a. Eligible Location. The location of the applicant business (see subparagraph 117.a.).
- b. Business Activity. The activity of the applicant business prior to any consideration of affiliation (see subparagraph 117.b.).
- c. Affiliates. State if there are any concerns affiliated with the applicant business (see paragraph 64.c.(3) for definition of affiliation).
- d. Primary Activity. State the primary activity of the affiliated group. If there are no affiliates, this is the same as the business activity.
- e. Size Standard for the Industry. The size standard that corresponds with the NAICS code of the **applicant** activity (see subparagraph 117.c.).

- f. Is the Applicant an Eligible Small Concern? Check the box if the applicant is a small concern. If the decision is not obvious, complete a nonformal size determination worksheet in the BFAT, sub-tab Size (see appendix 21).

NOTE: We do not require further analysis if the applicant is ineligible by reason of location, size, or activity. You must decline the request.

Section A.

The injury period is the time period during which the business feels the adverse affects of the disaster. You must determine the injury period at the outset because this time frame is a key element for the needs and injury analyses. The injury period does not necessarily begin with the date of the disaster, nor does it necessarily correspond to the incidence period stated in the declaration or designation. For Secretary of Agriculture (USDA) disaster declaration(s) which include the statement “and continuing,” the incident ending date shall be the application filing deadline, unless the declaration is amended to include an incident ending date. You must thoroughly understand the applicant’s business cycle to accurately determine the recovery period. Full recovery is often contingent upon completion of one or more business cycles.

NOTE: For Secretary of Agriculture (USDA) disaster declarations, the implementation of the filing deadline as the incident period ending date only pertains to the **incident** period. The amount of Economic Injury Loan eligibility will continue to be determined based on **injury** period losses and needs. For example, USDA issued a declaration on March 1, 2003, for drought with the incident period stated as “March 1, 2001 and continuing”, with a filing deadline of November 1, 2003. SBA would subsequently issue a declaration under the same terms to aid nonfarm businesses. Under this example, SBA eligible nonfarm businesses could suffer economic injury resulting from reduced income from farmers in crop years 2001, 2002, 2003 and possibly 2004. Such losses are eligible and may be considered under our program provided the nonfarm business applicant can show their economic injury was a direct result of the declared disaster.

NOTE: For MREIDL, process all applications under this program using Phase **II**. The incidence period for MREIDL would coincide with the activation of the essential employee and would end with their release from active duty status.

- a. The beginning date of the disaster and the date the resulting economic injury began.

These may be the same date, or there may be a delayed effect (such as in SecAg designations). All Phase I applications result from physical damage and the beginning date is the incidence date in the declaration. The onset of the injury can never predate the disaster. Plot dates of significance which impact the duration of the injury period.

- b. If there is no physical damage to the applicant's business, the onset of the injury may be delayed. This usually occurs when the injury is not the result of sudden physical damage. In these cases, you should first complete the monthly sales analysis in section **B.1.a.** to identify the onset of the injury. (You must plot the sales data first in all Phase **II** cases).

- c. The dates of events affecting the duration of the injury period; e.g., the date of completion of repairs if physically damaged; the completion of the business cycle; etc.
- d. The end of the injury period (the return to normal operations), actual or projected.

Section B.

There are two components of injury. You use section **B** to measure the injury to the business. The injury analysis is divided into two sections: "Injury from Operations" and "Balance Sheet Analysis and Extraordinary Items." Injury from Operations is further divided into two parts: (a) Monthly Sales Analysis (Phase II); and (b) Modified Contribution Margin (MCM) Analysis in Phase II. The most common injury is from operations. The monthly sales analysis measures the amount of lost sales. The MCM analysis measures the impact the reduction in sales had on funds available to maintain operations. This injury from operations is one component of injury. The other component of injury, the balance sheet analysis and extraordinary items, identifies additional injury not reflected in the operations. Section **B** addresses each component separately.

a. Injury from Operations - Monthly Sales Analysis (Section B.1.a.).

Most needs are generally attributable to reduced revenues. You must complete the monthly sales analysis to evaluate the impact of the disaster on operations. This helps identify the injury period. To measure the amount of lost sales, you determine:

- ◆ Sales had the disaster not occurred (normal); and
- ◆ Sales that actually occurred or will occur during the injury period.

In section **B.1.a.**, the initial month used in the sales analysis corresponds with the first month of the business' fiscal year. **Enter** the monthly sales figures for the 3 years preceding the disaster and for the year to date. If 3 years of sales figures are unavailable (due to the age of the business or inadequate financial records), obtain at a minimum the monthly sales figures for the injury period to date and for any corresponding historical periods available. When the availability of monthly sales figures is limited, obtain the best available historical figures (i.e., quarterly, semi-annual, or annual), along with an explanation of normal business cycles from the applicant. Using average monthly figures from quarterly, semi-annual or annual figures could substantially distort business cycles, so you must obtain information about any seasonality of the business.

(1) Determining Normal Sales.

Normal sales are those which would have been attained had the disaster not occurred. You must first review historical sales figures, identify, and apply trends to historical figures. Once you determine normal sales, insert them in the "Normal" columns of section **B.1.a.** for the months corresponding to the injury period and total the columns.

(2) Identifying and Applying Trends.

A trend can be upward, downward, fluctuating, stable, or undetermined.

Historical annual figures may suggest a certain trend. However, unless the corresponding injury period is also annual, seasonality or changes in business cycles may result in an annual trend which is different from the trend within the injury period. Therefore, to identify the appropriate trend, you must compare the historical sales only for the months, which correspond to the months of the injury period (e.g., if the injury period is May to July, normal should be based upon the sales trend for May to July over the previous years). **Generally, we** use the following to determine trends:

- (a) Upward. If the sales trend is upward, project continued growth as normal. For example, if the disaster injury period is January to June, and the historical data for these same months show respective 10 and 14 percent increases in sales during the corresponding periods, project a 12 percent increase in sales (average growth rate for the two previous years) to obtain the estimated normal sales. However, there could be a historical upward trend, but the upward trend itself could be decreasing. In the example above, if the historic upward trend was a 14 percent increase followed by a 10 percent increase, the trend is still upward but at a decreasing rate. In these cases, an average may not be representative. Use the most recent growth rate to project normal.
- (b) Downward. If the sales trend is downward, use the most recent year prior to the disaster as normal. This gives the benefit to the applicant as it assumes the business will duplicate the previous year. Due to the existence of declining industries and failing businesses, you do not automatically assume a declining trend has stopped when you are analyzing repayment ability.
- (c) Fluctuating. If the sales are fluctuating, you must determine if this is due to the accounting method, a business cycle extending beyond one year, or other economic factors. These factors are most prevalent in businesses engaged in major construction projects, media production, etc. In most of these cases, you base normal sales on the predisaster 3-year average. If the basis for forecasting normal sales is anything other than an average of the three predisaster years, you must justify your analysis in the **comments section B.1.a.**
- (d) Stable. If the sales are stable with little change during the months of the injury period from year to year, use the sales for the months of the injury period from the last year prior to the disaster as normal.

- (e) Undetermined. In some cases, the sales trend may be undetermined (e.g., when a business is new and has not had adequate time to establish historical patterns). You may need to rely upon financial forecasts to establish normal sales. You must determine if the forecast is reasonable and attainable (without the disaster) before using it.

NOTE: The above principles are guidelines, and it may be appropriate to deviate from them if circumstances warrant. You must justify any deviation **in comments section B.1.a.**

(3) Exclusions Due to Abnormal Occurrences.

Possibly, an abnormal occurrence in one of the prior periods may skew the results of your trend analysis. For example, a previous disaster or the serious illness of the owner could result in abnormally low sales during one of the periods. Similarly, the influx of a major construction project into an area could create a temporary business boom, which may not be sustained. In these examples, the sales indicated by the other years may be more representative of normal. If an abnormal occurrence exists, the trend analysis may exclude that period. The exclusion of a prior period does not imply all three periods should be ignored, or that you should search further back in history for a positive trend.

Recent (within the past few years) changes in the size or scope of operations can alter what is normal. For example, if a dry cleaner operated from only one location, but two years ago expanded by adding a second location, the historical sales and trends from the one-location operation would not be representative for comparison purposes when establishing normal. The same theory applies to businesses which have significantly changed their product mix or services in recent years. Your ability to recognize changes is critical to accurate and consistent analysis. After you identify the trend and establish normal, complete the appropriate lines in section **B.1.a.**

(4) Determining and Estimating Injury Period Sales.

Determine the sales during the entire injury period (the actual to-date sales plus the estimated sales during the remainder of the injury period). You only use estimated sales when the injury period is not over at the time of processing. If the injury period is ongoing, list the actual monthly sales to the most current date possible in the "Injury Period" columns. Review these figures and information available regarding the effects of the disaster on operations, and estimate the expected sales figures for the remainder of the injury period.

b. Injury from Operations - Modified Contribution Margin (MCM) Analysis (Section B.1.b.).

In Phase II, you use the MCM analysis to calculate the funds a business has or will generate to pay fixed expenses, service debt, compensate the owners (if applicable), and provide for its working capital needs.

In section B.1.b., you use the normal sales from B.1.a. to calculate an approximation of the amount of funds normally available to apply towards fixed costs, etc. You use the injury period sales to calculate a reasonable estimate of the amount that was or will be generated to apply towards needs. The difference between these two amounts is the lost MCM. It is the shortfall of funds from what the business would have been able to generate and what was actually generated.

(1) Definition of Gross Margin (GM).

GM is sales less cost of goods sold (COGS). You do not adjust COGS unless there is a change in the components of COGS from year to year.

(2) Definition of Modified Contribution Margin (MCM).

MCM is sales, less COGS, less expenses which are obviously variable. "Obviously variable" expenses are totally dependent on sales, (e.g., commission expense; delivery expense; etc.) and not included in COGS. You must review the operating statements and identify as variable only those expenses that are dependent on sales. There may have been some expenses not incurred because of the disaster due to a lack of sales. However, you do not adjust these because they are totally variable and are accounted for in the Actual MCM percent calculation. If there are no variable expenses, the MCM is the same as GM.

(3) Calculating Normal MCM or GM Percent.

You calculate the MCM or GM for each of the previous years (or other applicable period) in section B.1.b. You then calculate the MCM/GM percent for each of those years and record the result on the appropriate line. You determine the Normal MCM/GM percent by applying the same trend analysis principles used to calculate Normal Sales. Generally, you determine Normal MCM/GM percent on an annual basis because monthly income statements are not available. You must explain any deviation from the trend analysis guidelines if Normal MCM/GM percent does not follow directly from the trend analysis.

(4) Calculating the Injury Period MCM or GM Percent.

The injury period MCM/GM percent is generally the same as normal because the financial information is not available for a separate calculation.

However, sometimes the actual MCM/GM percent for the injury period may differ from the Normal MCM/GM percent. For example, the applicant was forced to liquidate merchandise at a substantial reduction. You must justify any deviation if the MCM/GM percent for the injury period differs from what would be indicated by normal.

(5) Calculating Lost MCM or GM.

You calculate Lost MCM or Lost GM as follows:

- (a) Multiply the Normal Sales by the Normal MCM/GM percent;
- (b) Multiply the actual/forecasted injury period sales by the actual/forecasted injury period MCM/GM percent; and
- (c) Subtract the result of the first calculation from the result of the second calculation.

NOTE: For Phase **II** analysis, the difference is the lost MCM.

c. Balance Sheet Analysis and Extraordinary Items (Section B.2.) (Phase II).

Economic injury is not always limited to lost sales or reduced margins. It may include extraordinary items, which generally result from the inability to convert current assets to cash, or the diversion of cash to meet additional expenses caused directly by the disaster. You must analyze extraordinary items because this injury usually is not revealed in the lost **MCM analysis**. You must be careful not to duplicate the injury from lost MCM when determining extraordinary items. You may need to make comparative balance sheet and other analyses to identify this additional injury, which generally occurs in one or more of the following categories:

(1) Frozen Inventory.

A business may have additional injury if it is unable to sell inventory due to the effects of a disaster. This may include: additional interest expense to carry the inventory; storage fees to hold the inventory; restocking and freight charges to return it; future losses in GM to liquidate it; etc. This is common with seasonal merchandise such as fertilizer, ski equipment, boats, farm equipment, holiday goods, etc. In other cases, the general income reduction in a disaster area will cause certain inventory to move more slowly.

Some businesses, such as furniture and appliance dealers, automobile and farm equipment dealers, etc., may have floor planned inventory. You must understand the business's inventory financing arrangements. Floor plan financing is provided by the manufacturer or a commercial finance company, and terms may vary greatly. For example, there may be an interest free period, interest only payments, or required periodic principal reductions (curtailments) due. Frozen inventory financed by floor plans can result in a demand for payment of part or all of the floor plan note prior to the sale of the inventory (creating a situation similar to a lender accelerating debt).

You calculate frozen inventory by reviewing the balance sheets and calculating the relevant ratios and comparing the results from the injury period to the prior period(s). You must identify any multi-year trends or fluctuating inventory turnover ratios that could indicate a greater or lesser injury.

(2) Frozen Accounts Receivable (A/R).

Frozen A/R creates injury in much the same way as does frozen inventory. When an applicant's receipt of payments on credit sales becomes slow, the cash available to pay fixed and other expenses is reduced. Since accrual income statements reflect only sales, and not the receipt of funds, the injury from frozen receivables will not be reflected in the lost MCM/GM analysis. You can measure frozen A/R by comparing:

- ◆ The predisaster and post-disaster A/R agings; and
- ◆ The predisaster and post-disaster receivables' turnover ratios (or days receivable).

You calculate frozen receivables by reviewing the balance sheets and calculating the relevant ratios and comparing the results from the injury period to the prior period(s). You must identify any multi-year trends or continuing collection problems that could indicate a greater or lesser injury.

The amount of injury attributable to frozen accounts receivable cannot exceed the actual amount of frozen receivables. When the receivables are uncollectible, they are considered an extraordinary item and will generally result in a 1:1 EI.

Frozen A/R creates additional injury and the need is reflected in the business's inability to pay creditors, fixed debt, or operating expenses.

(3) Eligibility for Accelerated Debt.

The need to meet accelerated debt is normally covered in section **D** of the needs analysis as an extraordinary item. **This injury is not measured by the lost MCM.** The fact that the debt has been paid does not reduce injury and may not reduce needs.

Accelerated debt arises from obligations which are frequently (quarterly, semi-annually, or annually) renewed or rolled-over, such as demand notes. The amount accelerated is the need. Eligibility is limited to the average amount the debt was previously reduced during the period corresponding with the injury period. This represents the true current portion the applicant could have paid had the disaster not occurred.

The disaster may cause the lender to require an accelerated payment in excess of the normal amount. This is because the economic injury resulting from the declared disaster has so weakened the condition of the borrower that the lender insists on a payout or a major reduction in the loan balance. Generally, amounts demanded by the lender in excess of the average previous reduction are not eligible. However, in these cases, the applicant incurred a need, which would not have otherwise occurred. Demands for accelerated debt payments may create additional eligibility, subject to the following restrictions.

- ◆ The lender must offer reasonable justification that the abnormal acceleration is the direct result of the disaster. Causes for acceleration such as FDIC audits or poor post-disaster economic conditions alone are not sufficient justification
- ◆ The amount of eligibility is limited to two times the average previous reduction of the debt. The ADLP must approve this recommendation.
- ◆ The eligibility may be raised to three times the average previous reduction of debt; however, the **CD/PDC** or Deputy must approve this recommendation.
- ◆ When EIDL proceeds are used to reduce accelerated debt, it may be necessary to have the remaining debt restructured to avoid the lender demanding payment in excess of what the borrower can meet.
- ◆ Because the EIDL substantially benefits the lender, it should be willing to restructure the borrower's debt. You must condition the LAA accordingly. If the lender is unwilling to cooperate, it may indicate predisaster problems between the applicant and lender, and could result in an inability of the applicant to remain viable.

(4) Extraordinary Items.

You cover extraordinary items that represent current needs in the needs analysis and these require no further support. However, an extraordinary item paid prior to filing the application will not appear in section D, column (f). In addition to the obligations that cannot be met because sales and margins were lower than normal, it is possible additional obligations cannot be met because the limited funds available were used to meet an extraordinary item. Again, instead of the needs being divided between columns (e) and (f) in section **D**, they all appear in column (e).

Section C.

The Basis for a Phase II EIDL is Needs. Needs are the normal working capital requirements for the injury period, less costs not incurred because of the disaster, plus disaster-related costs. Working capital generated from operations during the injury period and available excess business and personal resources reduce the amount of needs.

Many needs are apparent after your initial review of the financial information in the case file. The applicant may advise us of problems that have been or are being experienced. When you complete the spreadsheets, you can identify needs that are not immediately obvious. An analysis of the spreadsheet and its ratios may help you verify the applicant's requests.

In some cases, there may be no needs, and the business may already have returned to a normal level of operations. If there are no needs, there is no basis for an EIDL, and generally no further analysis is necessary. You divide needs into three categories, as follows.

- a. To-date needs are normal obligations already incurred (usually reflected as liabilities on the most recent available post-disaster balance sheet), which the business is presently unable to pay as a result of the disaster. They include funds necessary to bring delinquencies current and to restore working capital to normal levels. To-date needs are divided into two categories so you can identify problems:
- (1) Needs from transactions which predate the disaster; and
 - (2) Needs from transactions which post-date the disaster but predate processing.

NOTE: Post-disaster needs resulting from predisaster transactions are not necessarily excluded from consideration. For example, some businesses, particularly seasonal ones, may run behind on payments during their slow season and catch up during the busier season.

- b. Future needs are normal obligations, which the business would not be able to meet throughout the remainder of the injury period. They will sometimes be a continuation of to-date needs, such as:
- (1) Fixed debt payments necessary to maintain the current status of long term debts; or
 - (2) Payments of ongoing fixed expenses such as rent; utilities; insurance premiums; or the owner's draw/salary when the draw is both normal and essential. Future needs do not exist if the injury period is over and the balance sheet date corresponds to, or is dated later than, the end of the injury period. In this case, all disaster-related economic injury due to an inability to pay normal and necessary operating expenses should be reflected on the balance sheet of the applicant.
- c. Extraordinary items are needs outside of normal operations and directly caused by the disaster. You list these needs in column (f) to separate them from the needs that must be supported by the injury analysis. Extraordinary items can include:
- (1) Temporary rent or storage fees, additional advertising costs, etc.;
 - (2) Accelerated debt due to the disaster (see section **B.2.**);
 - (3) Inventory replacement may be an extraordinary item. For example, in the spring, a clothing store located in a disaster area is left with an inventory of winter clothing and has no funds to order summer stock. The cost of ordering summer inventory represents an additional need. If you recommend inventory replacement as EI, and a physical loan was also approved for inventory, you must be sure that you do not duplicate the physical loan; and
 - (4) Extraordinary items already paid will not show up in column (f) as needs because the applicant may have diverted funds normally used for customary expenses to pay them. This increases the amount of to-date needs shown as liabilities on the balance sheet and in columns (c) and (e). Section **B.2.** discusses this possibility.

- d. Resources and Recoveries. EIDLs may only fund uncompensated losses. Once you identify all needs, you must determine if any recoveries are available to alleviate these needs. The most common recoveries are business interruption insurance and state or local economic development grants.

If the applicant already received and used recoveries (or if they show on the balance sheet as cash), the needs you identify represent the remaining needs after injection of the recoveries. However, if not applied, deduct them here. If you anticipate a future recovery but details are uncertain, proceed as if there is no recovery and condition the LAA accordingly.

SBA regulations require EIDL applicants to use personal and business assets to alleviate the injury to the greatest extent feasible, without incurring hardship. "To the greatest extent feasible" means to the extent these resources are not necessary for the firm's survival or for the principal's livelihood. To identify excess resources and assets, review the applicant's financial statements to determine if part or all of the needs might be alleviated through:

- (1) Sale or utilization of assets not used in normal business operations; or
- (2) Sale or utilization of liquid assets which would not result in considerable loss to the business, or which are not required for reserves, immediate expansion, etc.; or
- (3) Financial resources of the parent firm controlling the applicant, affiliated firms, the proprietor, each general partner, each limited partner or affiliated group of limited partners who own 20 percent or more of the partnership, and each stockholder or affiliated group of stockholders with 20 percent or more ownership, as appropriate; or
- (4) Private credit sources.

Section D.

Remaining Essential Needs Summary. Further economic injury analysis is generally required prior to completion of this section. Additional needs may be discovered in later analysis in section C. Fully explain any entries in section D column (f).

Section E

The final stage of Phase II analysis is the reconciliation of needs and injury, completing the entire section E by comparing remaining essential needs from section D [excepting extraordinary needs in column (f)] with the total injury measured in section B.

- a. Limitations on the Possible Loan Amount (Phase II).

Because a Phase II EIDL cannot exceed the injury incurred, the possible loan amount is the lesser of the needs (from line D.12.(e)), or the Total EI (lost MCM from section B.1.b. plus additional EI from section B.2.), plus remaining extraordinary needs from D.12.(f).

- b. Calculating the Possible Loan Amount.

- ◆ Transfer the lost MCM amount from section B.1.b. to line E.1.
- ◆ Transfer any additional EI amount from section B.2. to line E.2.a.
- ◆ Transfer the total of lines E.1. and E.2. less any insurance recovery from E.2.b. to line E.3. (Total EI).

- ◆ Transfer any remaining essential needs from line D.12.(e) to line E.4.
- ◆ Transfer any remaining essential needs from line D.12.(f) to line E.6.

NOTE: The entry on line E.6. is not compared to injury. If the amount on line D.12.(f) includes accelerated debt, transfer only the eligible amount to E.6.

- ◆ Compare the remaining essential needs on line E.4. to the total EI on line E.3. If E.3. equals or exceeds E.4., the possible loan amount will be total needs (E4. plus E.6.).
 - ◆ If E.4. exceeds the total EI on line E.3., enter the shortfall on line E.5., proceed as follows.
 - (a) Review the components of the analysis for any errors and/or oversights.
 - (b) Review for the possibility of predisaster problems and consider if any needs can be addressed through workouts with existing lenders.
 - (c) If the review increases total EI, proceed. The possible loan amount will be the total remaining needs (E.4. plus E.6.). If the excess needs can be addressed through other means (e.g., workouts, etc.), the possible loan amount will be total EI plus remaining extraordinary needs (E.3. plus E.6.).
 - (d) You must explain any shortfalls (from line E.5., from ineligible portions of accelerated debt, or from any other ineligible needs). If the shortfall cannot be met through other means, decline for coded reasons 21 (lack of repayment ability) and 25 (inadequate working capital after the loan).
- c. Returning to the CET.
Once you determine the total EI, complete the CET. If the applicant passed both threshold tests and does not have credit available elsewhere, you should consider loan approval. If the applicant exceeds either threshold, the CET result will generally depend on the losses. In these cases, much of the test is complete and you can finalize the decision. If the CET result is no credit available elsewhere, proceed. If credit is available elsewhere, decline for coded reason 34, or justify a hardship waiver, if appropriate.
- d. Proposed Eligible Use of Proceeds.
 The use of proceeds should be consistent with the needs identified in sections C and D. You must justify any restrictive or irregular use of proceeds and/or for any special conditions imposed to assure the needs will be met.
- e. Disbursement Instructions.
 Any special or unusual conditions for disbursement must be explained in the comments section of E. You must support any disbursement restrictions by including special conditions in the LAA advising the borrower of the requirements for obtaining disbursement. You must provide any instructions relevant to the timing of disbursement for the Legal Department.

Appendix 21

(paragraphs 116 and 117)

SIZE APPENDIX1. Why a Size Standard?

SBA's size standards define whether a business concern is small and, therefore, eligible for an EIDL. SBA establishes size standards by types of economic activity, or industry, under the North American Industry Classification System. NAICS manuals are published by the Office of Management and Budget (OMB). You must use the NAICS manual to determine the NAICS code applicable to the primary activity of the applicant and of any affiliates.

2. Size Standards for an EIDL Applicant.

13 CFR §121.301(a) states: "For Business Loans and Disaster Loans (other than physical disaster loans), an applicant **business must satisfy two criteria:**

- a. **The size of the applicant alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged; and**
- b. **The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher.**

3. Definitions.

- a. Business concern may be a sole proprietorship, partnership, limited liability entity, corporation, joint venture, association, trust, or cooperative.
- b. Unaffiliated concern is a single legal entity that does not have any affiliates.
- c. Affiliates: **See paragraph 64.c.(3).** For detailed guidance on defining affiliation, refer to 13 CFR §121.103.
- d. Affiliated group means two or more distinct legal entities which are affiliated.
- e. Labor Surplus Area Differential. The applicable size standards are increased by 25 percent when the applicant is in a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication Area Trends. This information is available **online at www.doleta.gov.**
- f. **Size Determination Worksheet is used to make an informal or formal size determination.**

4. Types of Size Determinations.

- a. Initial (informal) size determinations qualify EIDL applicants as small business concerns. You make initial size determinations and an SLO takes final action. You must obtain guidance from legal counsel if issues are unclear or controversial. You must decline the application (code 33) if the determination results in a finding of "other than small" and send an SBA Form 355, "Application for Small Business Size Determination," with our decline letter.

- b. Formal size determination is the reconsideration of an initial size determination. You make formal size determinations based upon information submitted by the applicant on SBA Form 355. (Refer to 13 CFR §121.1001 to §121.1009 for procedures for a formal size determination.) We require SLO concurrence and a written concurrence by Center Counsel or designee, however only the CD/PDC or designee can take final action. If this results in a finding of other than small, they must decline the application. Our decline letter must state that the applicant has the right to request a review of the size decision. The applicant must make this request to SBA's Office of Hearings and Appeals (OHA) within 30 days of the formal decline.
- c. The size determination made by the CD/PDC is final unless OHA accepts a petition for a review. The procedures for requesting discretionary reviews by OHA are found in 13 CFR Part 134.
5. How to Make a Size Determination.
- a. Determine the Applicable Size Standard.
- (1) Use the procedures in 13 CFR §121 to determine the applicable size standard. NAICS codes and corresponding size standards can be found at 13 CFR §121.201.
 - (2) If the applicant concern has receipts from only one industry, determine the appropriate NAICS code from the description of the applicant concern's operations and use it to determine the corresponding size standard.
 - (3) If the applicant concern has receipts from more than one industry, determine the NAICS code for each industry from the description of the applicant concern's operations. Obtain the receipts for the most recently completed fiscal year prior to the onset of the disaster for each industry and determine the primary industry (primary activity). Apply the size standard for the NAICS code of the primary industry of the applicant concern. This is generally the industry that generates the most revenues.
- For example:
- Joe's Fish House, Inc. was damaged by a hurricane in September 2005. The corporation has a fiscal year ending (FYE) of September 30. The appropriate FTR to use is for the FYE ending 9/30/04. If the applicant entity, Joe's Fish House, Inc., operates both a commercial fishing vessel (NAICS Code 114111) and a wholesale seafood operation (NAICS Code 424460), you must determine the receipts for FYE 9/30/04 for each of these industries, separately. If the fishing vessel generated the most receipts, the size standard applied would be \$3,500,000 in average annual receipts (AAR).
- If the wholesale seafood industry had generated the most receipts, the size standard of 100 employees in average number of employees (ANE) would be applied.

SBA may also consider other factors, such as employees, cost of doing business, and the distribution of patents, contract awards, and assets (13 CFR §121.107).

NOTE: The SBA disaster loan application does not require applicants to submit receipts by industry. This information must be obtained by the processing loan officer as needed. Some applicants may not keep records with sufficient detail to permit a breakdown of receipts by industry. Seek guidance from your supervisor if you are unable to obtain detailed receipts by industry information.

b. Determine the Size.

(1) Identify Affiliates.

If your review of the assets and sources of income of the applicant concern and its principals show the existence of other business interests, you must determine whether affiliation exists. Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both, either directly or indirectly. It does not matter whether control is exercised, so long as the power to control exists. Control may be either affirmative or negative. (Refer to 13 CFR §121.103). SBA considers factors such as:

- (a) Common ownership, common management, contractual relationships, identity of interest, affiliation through predecessor concerns, and nature of control;
- (b) The applicant concern and all its domestic and foreign affiliates, whether organized for profit or as nonprofit, as potential members of the affiliated group; and
- (c) The nature of ownership and control. For example:
 - (i) The 100 percent owner of a closely held corporation also operates another business as a sole proprietorship. In this case, due to common ownership and control, affiliation is obvious.
 - (ii) An applicant partnership has two general partners, both of whom have 10 percent ownership in a corporation. Here the partners have an identity of interest and are viewed as one party having 20 percent ownership in the corporation. Whether that ownership is controlling is dependent on the ownership of the remaining 80 percent, who are the officers, and what are their powers of office. If the remaining 80 percent is held by one person who is also the president, the partners probably do not have control. However, if the remaining 80 percent is divided equally among eight other persons, the partners could have control. The officers, the powers of office, the relationship among the other eight owners, and the relationship among the partners and those eight owners, are all factors in the final determination of control and affiliation.

(2) Apply the Size Standard.

You must calculate the average annual receipts (AAR), or the average number of employees, of the applicant, including its affiliated group. You must make these calculations and comparisons using the procedures detailed in 13 CFR §121.104, §121.106 & §121.201:

- (a) If the size standard for the NAICS code of the primary activity is expressed in AAR, you must use the procedures in 13 CFR §121.104;
- (b) If the size standard for the NAICS code of the primary activity is expressed in average number of employees, you must use the procedures in 13 CFR §121.106;
- (c) You must use the procedures in 13 CFR §121.201, §121.301(a) & §121.302(c) in comparing the results of your calculations to the applicable size standard for the primary activity of the applicant concern. If the applicant concern, including its affiliated group, is "other than small," you must decline the EIDL application due to size (code 33).

APPENDIX 22

(paragraph 76)

RIGHT TO FINANCIAL PRIVACY1. CREDIT INQUIRY LETTER

We must add the following paragraph to any credit inquiry letter (see **SBA Form 143**) whenever we mail it to a financial institution and the application includes an executed consent form:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-360. Pursuant to Section 1113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

2. RIGHT TO FINANCIAL PRIVACY ACT OF 1978a. General.

Congress passed this Act (effective date May 10, 1979) to protect individuals from any unwarranted intrusions into their financial affairs by Government authorities. We must notify certain applicants and their principals that we have the right to access financial records and information necessary to process, service or foreclose a loan or loan guaranty. SBA disaster loan applications are designed to provide appropriate notice to the applicant and principals as required by the Act. Observance to this paragraph is necessary to protect financial institutions from liability when they furnish financial information.

Do not confuse this Act with the Privacy Act of 1974. They are two separate and distinct pieces of legislation.

b. Definitions.

Terms used in the Act have the following special meanings.

- (1) Customer/Individual means a natural person, a proprietorship, a partnership of five or fewer partners, or a corporate officer, director, or shareholder in his/her individual capacity.
- (2) Financial institutions mean participating banks, banks of account, creditor banks, savings and loan associations, credit unions, credit card issuers and production credit associations (PCAs). We do not consider credit bureaus, insurance companies, suppliers, or retailers as sources of financial records or financial institutions.

- (3) Financial records mean the actual records or copies of the records in a financial institution; a compilation, summary, or report derived from records; the actual records submitted for review or a written or verbal opinion resulting from the records.
- (4) Notice means the statement required by the Act given to all appropriate individuals associated with all applications.
- (5) Certify or Certification means the statement SBA must make in requesting information from a financial institution to the effect that the request complies with this Act. A single certification will be sufficient for the term of the loan or loan guaranty with regard to a specific customer.

c. Exclusions.

The Act specifically excepts or excludes (or is silent on) certain exchanges of information from the provisions of this legislation.

- (1) Financial records of corporations are not included. However, financial records of corporate officers, shareholders, and directors as individuals are included.
- (2) Financial records of partnerships having six or more partners are excluded (but not the information concerning the partners as individuals).
- (3) Personal financial information supplied by the individuals directly to SBA is not covered. Requests for financial institutions to verify any such information are covered.
- (4) Information received from nonfinancial institutions is excluded.
- (5) Exchange of information between financial institutions is not covered.

d. Implementation.

A copy of "Statements Required by Laws" is attached (in tear-off fashion) to every application issued. The applicant must read and retain this. Do not accept an application for processing if the tear-off is still attached. If this occurs, detach and return it to the applicant (see paragraph 69). In addition to the **Right to Financial Privacy Act of 1978**, this document provides required notice of other legislation.

Telephone verification of financial information on individuals involved in any way with a loan application is considered an exchange of information and must be preceded by written certification.

The law regarding the exchange of credit information between SBA and IRS or any other Federal authority is complex. Therefore, you must refer all exchanges to Center Counsel.

APPENDIX 23

(paragraph 75)

OPINION OF GENERAL COUNSEL:EQUAL CREDIT OPPORTUNITY ACT (ECO) IN COMMUNITY PROPERTY STATES

DATE: July 25, 1994

TO: Bernard Kulik
Associate Administrator for
Disaster Assistance

FROM: Martin D. Teckler
Deputy General Counsel

SUBJ: Equal Credit Opportunity Act and Community Property States

This is in response to your request of July 12, 1994 for our views with respect to the application of the Equal Credit Opportunity Act (“ECO”), 15 U.S.C. 1601 *et seq.*, in community property states, such as California. You advise that one of the Disaster Area Offices of the Small Business Administration (“SBA”) requires spouses in a community property state to be co-borrowers on a disaster loan even if only one of the individuals actually applied for disaster assistance.¹ (**view the footnote**) In our opinion, this is inconsistent with ECO, and we note the following.

To implement ECO, the Federal Reserve Board (“Board”) has promulgated regulations in 12 CFR Part 202 (“Regulation B”) which have equal applicability in community and noncommunity property states. We have also considered the Board’s Official Staff Commentary on Regulation B (“Commentary”). Under Section 202.8 of Regulation B, a creditor in a special purpose credit program (which includes SBA disaster financing) may obtain the signature of an applicant’s spouse or other person on an application or credit instrument (i.e., note) if the signature is required by federal or state law. We are not aware of a federal or state law which requires the applicant’s spouse to sign the application or note relating to SBA disaster assistance.

¹ California law makes one spouse personally liable only for the “necessaries” debts incurred by the other spouse. (Case law in California has defined “necessaries” as that required to sustain life). See section 914 of the California Family Code which provides that a married person is personally liable for a debt incurred by the spouse during marriage if incurred for the necessities of life. Section 910 provides that the community property is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt. Section 913 provides that the separate property of a married person is not liable for a debt incurred by the person’s spouse before or during marriage.

Section 202.7(d) of Regulation B prohibits a creditor from requiring the signature of the applicant's spouse or other person other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. We note the commentary on Section 202.7 of Regulation B:

“An applicant who requests individual credit relying on the income of another person (including a spouse in a noncommunity property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so...”

With respect to unsecured credit, if an applicant is relying upon community property not under the applicant's control (or is relying on the spouse's separate property), the creditor may require the spouse's signature on any documents required under state law to make the property available in case of default. If the applicant has control over sufficient community or separate property to meet the creditor's standards of creditworthiness, the creditor can not require the spouse or any other person to sign any credit instrument. With respect to secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the collateral available to satisfy the debt in the event of default, such as an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings. With minor exception, SOP 50 30, appendix 23, incorporates these rules.

1. In your first example, the husband applies for disaster loan assistance, and the spouse does not sign the loan application. Damaged property is jointly owned by the spouses. The SBA loan officer bases repayment ability solely on the husband's income and approves a disaster loan. Can SBA automatically require the spouse to be a co-borrower on this loan?

Answer. No. If the husband's singular application supports the financing, the spouse cannot be asked to sign the application or the note. However, the spouse can be asked to sign any of the collateral documents to ensure that SBA obtains a valid lien on the collateralized property or to pass clear title in the event of default by the husband.

2. The wife applies for a disaster loan for rental property she owned prior to her marriage. The spouse does not sign the disaster loan application. The loan is approved on the wife's repayment ability. Should SBA automatically require the spouse to be a co-borrower on the loan?

Answer. No. If the wife's credit supports the loan assistance, SBA cannot require the spouse to sign the note. The marital relationship, by itself, does not authorize a creditor to require both spouses to be jointly and severally liable on a debt instrument.

3. The husband applies for disaster loan assistance, and the spouse does not sign the loan application. The SBA loan officer bases the applicant's repayment ability on the husband's reported income and denies the loan for lack of repayment ability. However, if the spouse's income had been considered the loan would have been approved. Can SBA require the spouse to be a co-borrower?

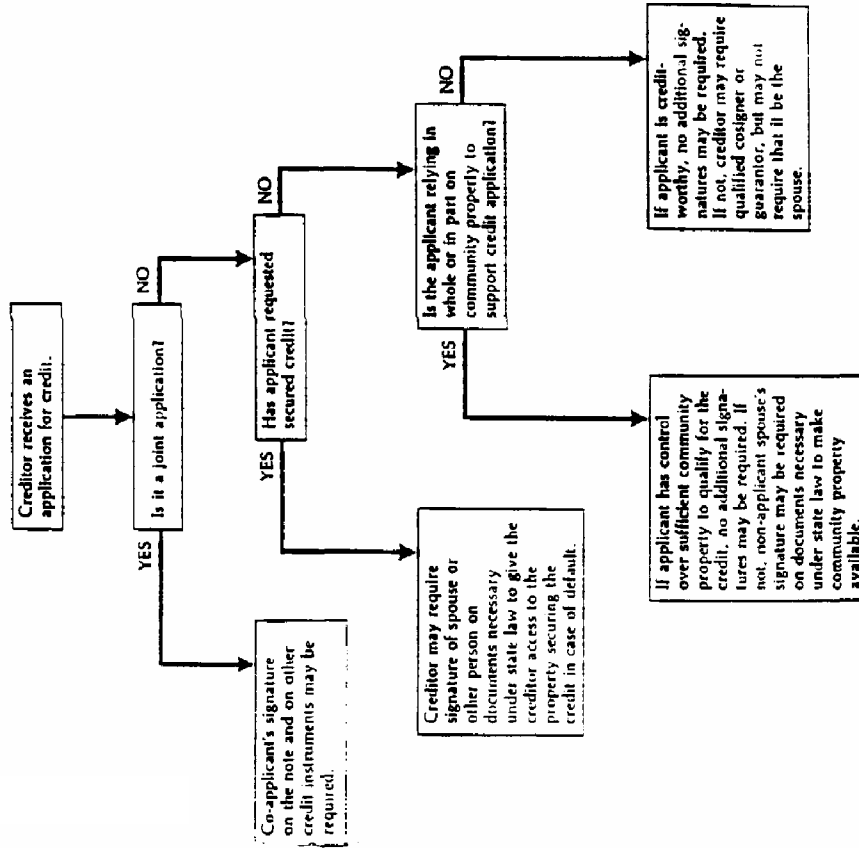
Answer. No. It is up to the applicant to decide whether the spouse or another person will be a cosigner or a guarantor. In the decline letter, you can inform the applicant that the applicant's resources alone do not support the grant of financial assistance by SBA, but it is up to the applicant and spouse to provide you with the spouse's offer to sign the note.

In your memorandum, you add additional inquiries. In joint ownership cases, can SBA automatically require the spouse to be a co-borrower? No. Does this interpretation apply to both home and business disaster loans? Yes. If an applicant does not meet the lender's standards of creditworthiness and the personal liability of another party is necessary, the lender may ask the applicant to obtain a cosigner or guarantor, but cannot require that it be the spouse. If husband and wife voluntarily make a joint application, you may require both to sign the note and other credit instruments.

To assist your Disaster Area Offices, enclosed are several copies of a pamphlet, "Signature Rules in Community Property States: Regulation B", prepared and issued by the Board.

Enclosure

Signature Requirements for Community Property States



FRB-1-3000-1290

Signature Rules in Community Property States: Regulation B

To help ensure the equitable treatment of all applicants in credit transactions, the Equal Credit Opportunity Act and Regulation B prohibit creditors from routinely requiring that an applicant's spouse (or anyone other than an applicant or joint applicant) sign a promissory note or other debt instrument when the applicant is creditworthy in his or her own right. The regulation has special rules that apply to credit applicants who reside in community property states or who are relying on property located in such states (The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Wisconsin, and Texas.) This pamphlet can help you understand those rules.



Prepared and distributed by the Federal Reserve System

The Two General Principles

Two general principles apply throughout Regulation B's signature requirements. First, you may not require a signature other than the applicant's on the note or similar debt instrument if the applicant applies for individual credit and qualifies under your standards for the amount and terms of the credit requested.

Second, you have more latitude in asking for signatures on security documents required by your state law in order for you to reach property used as collateral (for example, jointly-owned real estate). To understand the general rules, you must distinguish between debt instruments and security documents.

A debt instrument, such as a promissory note, is a legally binding admission that a debt exists. Each signer is personally liable for the debt.

A security document, such as a mortgage or security agreement, creates a more limited obligation—one that allows the lender to reach the signer's interest in the property used as collateral, in the event of a default. After default and the sale of the property, if an amount remains due to the creditor, a person who has signed only a security agreement is not obligated to pay the deficiency.

default. On the other hand, if the applicant has control over separate property standards of creditworthiness, then you must not require the applicant's spouse or any other person to sign any credit instrument.

Rules for Secured Credit

In a secured credit transaction, if the applicant is creditworthy, you may not require any person other than the applicant to sign the promissory note. However, Regulation B permits you to obtain the signature of the applicant's spouse (or any other person) on a mortgage or other security agreement if state law requires that signature to create a valid lien on the property offered as security.

If you are entitled to a non-applicant's signature on a security document, and you use a combination debt-and-security instrument, the document must either—

- state that the non-applicant's signature functions only to create a valid security interest or to make property available in case of default, or
- segregate the security agreement from the note to make clear that the non-applicant is signing only to give a security interest rather than to undertake a credit obligation.

Rules Applicable to Borrowers Secured and Unsecured Credit

If an applicant does not meet your standards of creditworthiness and the personal liability of another party is necessary, you may ask the applicant to obtain a cosigner or guarantor. Although the applicant may choose the spouse to sign, you cannot require that it be the spouse.

In a business credit transaction, if a guarantor is required, these same signature rules apply; for example, you may not routinely require that the guarantor's spouse join in the guarantee.

If two applicants voluntarily make a joint application, you may require both to sign the note and other credit instruments.

For Further Information

The following chart summarizes the rules discussed above. For further information contact your primary federal regulator.

Special Signature Rules in Community Property States

Rules for Unsecured Credit

If an applicant for unsecured credit is relying upon community property not under the applicant's control (or is relying on the spouse's separate property), then you may require the spouse's signature on any documents required by your state law to make the property available in case of

APPENDIX 24

(paragraph 46)

CRITERIA FOR DETERMINING INTEREST RATESFOR DISASTER HOME LOANSGENERAL

The Small Business Act requires us to determine if credit is available elsewhere before we assign an interest rate. If we determine the requested financial assistance is available at reasonable rates and terms from nongovernment sources, the market (higher) interest rate applies. The Credit Elsewhere Test (CET) measures the applicant's ability to address the disaster loss from available resources or to obtain credit from non-Federal sources at reasonable rates and terms. CET guidelines consist of three criteria: Credit Score Test, Cash Flow Test, and Asset Test. Credit Available Elsewhere is determined when the application meets any two of the three criteria.

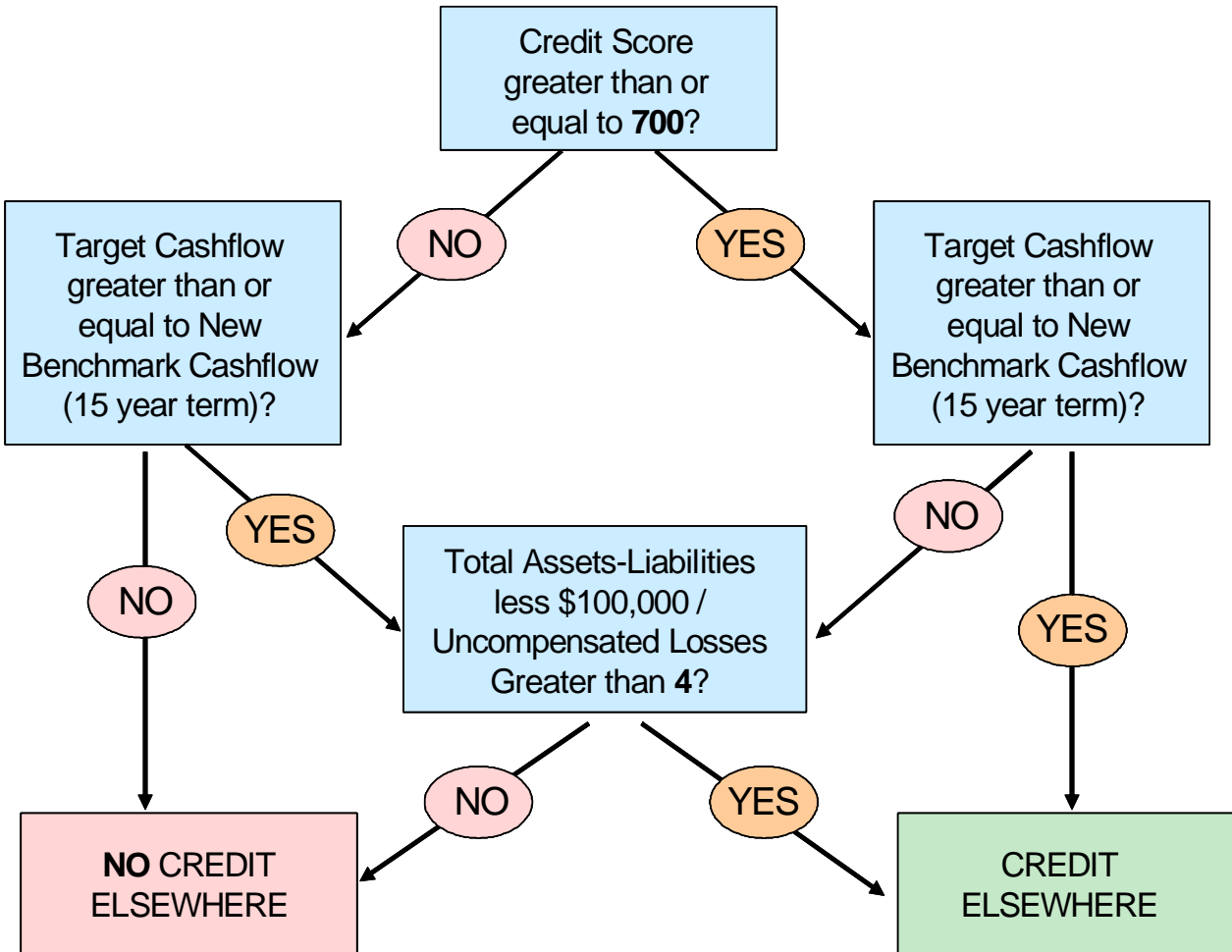
1. **Credit Score Test.** Established lending industry standards show a credit score of 700 or higher enables applicants to borrow money at reasonable rates and terms. As such, an application meets the Credit Score Test criteria when the credit score of the primary wage earner is equal to or greater than 700.
2. **Cash Flow Test.** The Cash Flow Test measures whether the applicant appears to have the sufficient cash flow required to support a loan payment that is calculated based on the market interest rate. The Cash Flow Test is comprised of two calculations: Target Payment and Benchmark Payment (Total Payment at Benchmark Rate). SBA utilizes benchmark rates, which represent prevailing rates in the commercial market, to determine the hypothetical payment required to service a private sector loan to repair damages.
 - a. Target Payment equals the monthly cash available to service additional debt divided by three ($1/3$ CA).
 - b. Benchmark Payment represents the monthly loan payment amount which is calculated using the following:
 - (1) Loan Amount = Total Uncompensated Loss
 - (2) Loan Term = 15 years (without deferments)
 - (3) Interest Rate = Market rate in effect for that application's disasterThe application meets the Cash Flow Test criteria when their calculated Target Payment is equal to or greater than the calculated Benchmark Payment.

3. Asset Test. The Asset Test uses an Asset Ratio to measure the applicant's ability to utilize Adjusted Net Worth (ANW) to repair or replace the disaster damage property. The application meets the criteria for the Asset Test when the Asset Ratio is greater than 4:1.
 - a. Asset Ratio is ANW divided by Uncompensated Loss
 - b. ANW is Total Assets less Total Liabilities less \$100,000

When an application meets the criteria for Credit Available Elsewhere, the Loan Officer must determine whether the assignment of the market rate will result in a repayment amount that will cause the applicant undue financial hardship. When appropriate, a hardship waiver may be granted. Although rare, when used a hardship waiver must be justified in the case file and approved by an SLO.

NOTE: ADLP or designee approval is required for any loan modification action that changes the interest rate from below market rate to market rate when there is no hardship waiver.

Home Credit Elsewhere Test Flowchart



APPENDIX 25

(paragraph 46)

CRITERIA FOR DETERMINING INTEREST RATESFOR DISASTER BUSINESS LOANSGENERAL

The Small Business Act requires us to determine if credit is available elsewhere before we specify an interest rate for a physical disaster business loan. The business CET measures the applicant's ability to address disaster losses using available resources or access to nonfederal lending sources at reasonable rates and terms. CET guidelines consist of two criteria: Cash Flow Test and Asset Test. Credit Available Elsewhere is determined when the application meets both criteria.

1. Cash Flow Test. The Cash Flow Test measures whether the applicant appears to have the sufficient cash flow required to support a loan payment that is calculated based on the market interest rate. The Cash Flow Test is comprised of two calculations: Target Payment and Benchmark Payment (Total Payment at Benchmark Rate). SBA utilizes benchmark rates, which represent prevailing rates in the commercial market, to determine the hypothetical payment required to service a private sector loan to repair damages.
 - a. Target Payment equals the monthly cash available to service additional debt divided by three (1/3 CA).
 - b. Benchmark Payment represents the monthly loan payment amount which is calculated using the following:
 - (1) Loan Amount = Total Uncompensated Loss
 - (2) Loan Term = 15 years (without deferments)
 - (3) Interest Rate = Market rate in effect for that application's disaster

The application meets the Cash Flow Test criteria when their calculated Target Payment is equal to or greater than the calculated Benchmark Payment.

2. Asset Test. The Asset Test uses an Asset Ratio to measure the applicant's ability to utilize Adjusted Net Worth (ANW) to repair or replace the disaster damage property. The application meets the criteria for the Asset Test when the Asset Ratio is greater than 4:1.
 - a. Asset Ratio is ANW divided by Uncompensated Loss
 - b. ANW is Total Assets less Total Liabilities less \$100,000

When an application is determined to have Credit Available Elsewhere a maximum 3-year term applies. Additionally, EIDL applicants determined to have Credit Available Elsewhere are ineligible for disaster assistance. The credit elsewhere determination also applies to nonprofit organizations. However, nonprofit organizations determined to have Credit Available Elsewhere are not subject to the maximum 3-year term.

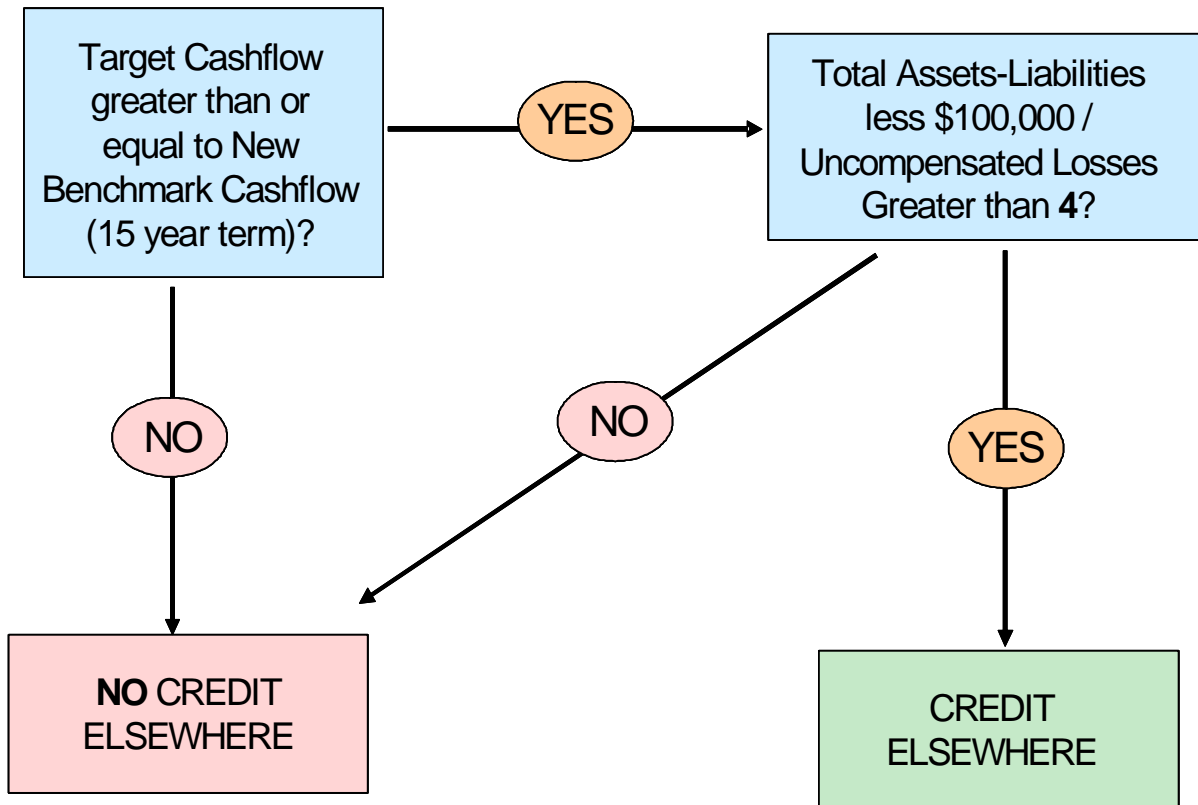
We must consider the applicant, its owners or principals, and its affiliates. Principal and affiliate information is incorporated into the ratio analysis based on the percentage of ownership or affiliation. Principals with less than 20% ownership are excluded. Affiliates with less than 50% affiliation are excluded. Subsidiaries of the applicant are included based on the percent of ownership the applicant has in the subsidiary. The \$100,000 exclusion is applied after all principals, affiliates, and subsidiaries have been included in the applicant's net worth.

NOTE: If the result of the calculation for any entity is negative, it will be included in the net worth calculation as '0'.

When an application meets the criteria for Credit Available Elsewhere, the Loan Officer must determine whether the assignment of the market rate will result in a repayment amount that will cause the applicant undue financial hardship. When appropriate, a hardship waiver may be granted. Although rare, when used a hardship waiver must be justified in the case file and approved by an SLO.

NOTE: ADLP or designee approval is required for any loan modification action that changes the interest rate from below market rate to market rate when there is no hardship waiver.

Business Credit Elsewhere Test Flowchart



APPENDIX 26

(paragraph 84)

THE FIXED DEBT METHOD (FDM):DOCUMENTING INCOME AND DETERMINING REPAYMENT ABILITYFOR DISASTER HOME LOANS1. GENERAL

You must follow the guidelines in this appendix to document income, determine repayment ability and set loan terms. However, these guidelines permit flexibility based upon your judgment and discretion.

2. DOCUMENTING REPAYMENT ABILITYa. Continuance Of Income (Cash Flow).

You base repayment ability on continuing income. You should examine the applicant's occupation, opportunity for future advancement, education, professional (occupational) training, length of employment, etc., and apply the following.

- (1) You cannot consider age when determining repayment ability. However, you must consider future income reductions if applicants are approaching retirement.
- (2) You may consider part-time employment (e.g., a worker for various temporary employment agencies) as continuing income if it occurs year after year at similar levels.
- (3) You may consider seasonal employment (e.g., construction, oil fields, etc.) as continuing income if applicants work full-time (on a seasonal basis) with the same or various employers. You may consider unemployment compensation as continuing income if it is received in conjunction with seasonal employment.

b. Sources of Income.(1) Salaries and Wage Income.

All applicants give us permission to obtain their FTR data directly from IRS (using IRS **Form** 8821). This is our primary source of income documentation.

NOTE: In areas that do not use FTRs, such as commonwealths, territories, or U.S. possessions, we require comparable documentation.

(2) Change of Employment.

Generally, applicants who changed employment within the last two years must submit a copy of a current pay stub (dated within one month of the application date). You must review the pay stub and contact the employer if you have questions. However, if there is no pay stub, you must contact the employer to verify employment and the current income of the applicant(s) and chron your conversation in the Comments Tab. Be sure to include the name and position of the individual with whom you spoke.

(3) Reconciliation of Income to Application.

Financial information reported on the application should be consistent with FTRs or other verified sources. If there is a discrepancy of 5% or more annually between the reported and verified income, you must determine the correct amount to use and document your LOR.

NOTE: If the apparent discrepancy results from nontaxable income (e.g., tax-free bonds, Taps or 401Ks, etc.), make a brief comment in your LOR.

For example, a loan application indicates wages of \$64,000. The applicant has been with the same employer for seven years. The IRS tax information for the most recent year reveals wages were \$49,000. The applicant informs you of a recent promotion from assistant vice-president to general manager. You must contact the employer, substantiate the higher wage, and document the chron log. Then you can use \$64,000.

Similarly, an application indicates annual wages of \$42,000 from employment as a full time high school teacher. The prior two FTRs reveal wages of \$38,100 and \$40,000 respectively. You contact the applicant and learn the difference is due to annual cost of living increases of approximately five percent. Because this is reasonable and consistent with historical information, you can use the higher wage of \$42,000 without additional documentation. Your chron log must detail the discussion which led to this conclusion.

NOTE: You must use FTRs if applicants cannot provide a satisfactory explanation or documentation of differences between incomes reported on FTRs vs. the SBA Form 5C. If applicants maintain the income reported on the FTR is understated, they can file amended tax returns and we may consider them upon confirmation by the IRS Form 8821 data. If they do not provide amended FTRs, a decline is warranted.

(4) Social Security Income.

Some applicants do not have to file FTRs if their income includes social security (including permanent SS disability) and they do not have dependent children. In some cases you can use the amount reported on the SBA Form 5C unless the amounts reported include temporary benefits. To include them as income, you must obtain written verification

(e.g., copy of award letter) and determine the beneficiaries, the amount(s), and the duration. Some examples are dependent benefits, benefits for temporary disabilities, workers compensation, etc., which might have a definite expiration date. If you know the temporary benefits are of short duration, exclude them from gross income without written confirmation.

(5) Pensions and Similar Retirement Income.

FTRs generally disclose the distribution of pensions, annuities, IRA and 401(K) distributions, etc. However, if it is below the minimum level required to file an FTR, no separate documentation is necessary. In some instances, the applicant may have filed a short form FTR (IRS 1040A or IRS 1040EZ) which discloses pension/IRA income, but does not disclose concurrent SS income. In these cases, you can use the SS income shown on the SBA Form 5C without separate documentation.

(6) Self-Employment Income.

You must carefully examine self-employment income. On a case-by-case basis, you may need additional information (e.g., current financial statements) if FTRs are not current or representative of present operations.

- (a) You can consider the employment stable if the applicant has been self-employed for 2 years or more or was previously employed in the same line of work.
- (b) You must add back certain items to net profit when determining GAI. These include depreciation, duplicated interest, noncash charges and similar items. You must analyze 2 years FTRs and determine the trend. If the trend is stable or upward, without unusual circumstances (change in business emphasis, change in market base due to the disaster, etc.), you can base repayment on the adjusted net profit. If the trend is downward, or unusual circumstances exist, further analysis is necessary using the business loan criteria.
- (c) You must identify trends and calculate averages if income is from commissions and fluctuates from year to year.

(7) Other Income.

- (a) You may consider overtime pay and bonuses as continuing income if the applicant:
 - ◆ Received this income on a consistent basis for the last 2 years; and
 - ◆ Will receive it on a regular basis in the future.
- (b) You may consider interest and dividend income continuing if the amounts stated on the application generally reconcile to FTR data and the "Statement of Assets," Section D. If they do, no further proof is needed. Otherwise, you must obtain appropriate

documentation or explain why they do not reconcile. (Frequently, applicants include recent disaster-related insurance settlements as part of their cash on hand.)

- (c) You may consider note receivable and seller-financed mortgage income continuing if the amounts stated on the application generally reconcile to FTR data and the SBA Form 5C. If they do, no further proof is needed. However, you must always:
 - ◆ Determine the duration of this income;
 - ◆ Determine the principal portion (if any); and
 - ◆ Require copies of the Note or other proof if not supported by FTR data.
- (d) Applicants in the military services, and certain other applicants, may be entitled to different types of pay in addition to their base pay (e.g., flight or hazard pay, allowance for rations, clothing, quarters, car, etc.). You can consider this part of stable income if you document its continuance.
- (e) You may consider alimony and child support income if:
 - ◆ The applicant discloses this income; and
 - ◆ You establish continuance for a reasonable period of time.

Alimony income disclosed on the SBA Form 5C should reconcile to FTR data. If it does, no further proof is needed (IRS requires alimony to be declared on the FTRs, but not child support). Otherwise, you must obtain documentation (divorce decree, court order, etc.).
- (f) You may consider nontaxable income, such as tax free bonds, if properly documented.

c. Conflicting FTR Information.

You must compare the applicant's FTR (if provided) with the IRS transcript. You must report substantial differences immediately to the OIG (see paragraph 10 and appendix 15).

3. THE FIXED DEBT METHOD (FDM)

a. Introduction.

Disaster loans are unplanned debts, and create neither an increase in assets nor an improvement in lifestyle. Because disaster loans repair/replace existing property, applicants pay twice to maintain those assets. Although replacing disaster damaged property is our mission, the nature and purpose of the debt does not affect the fact that there is a certain maximum level of debt that one can afford.

The FDM is a lending concept based on guidelines used by the mortgage banking industry. The FDM assumes:

- (1) There is a maximum debt level (expressed as a percentage of gross income), one can afford;
- (2) If the maximum debt level is not exceeded the balance of gross income can pay taxes and ordinary and necessary living expenses; and
- (3) Once the maximum debt level is exceeded, default is more likely to occur.

b. FDM Calculation.

- (1) The FDM formula is:

$$\text{GMI} \times \text{MAFD percent} = \text{MAFD}$$

$$\text{MAFD} - (\text{MFD} + \text{IIP}) = \text{CA}$$

- (2) Definitions.

- (a) GMI (Gross Monthly Income). Gross annual income divided by 12.
 - (b) MAFD percent (Maximum Acceptable Fixed Debt Percentage). The percentage of income which generally can be allocated for fixed debts without incurring undue risk. For SBA disaster loan purposes, the standard MAFD percent is 36 percent for GAI of \$25,000 or less and 40 percent for GAI above \$25,000.
 - (c) MAFD (Maximum Acceptable Fixed Debt). The result of the $\text{GMI} \times \text{MAFD percent}$ calculation, expressed in dollars. This amount usually represents a ceiling at which point the applicant can incur no more fixed debt without undue risk.
 - (d) MFD (Monthly Fixed Debt). The greater of: (1) the total amount of all continuing fixed obligations (exclusive of living expenses), or (2) 25 percent of GMI.
 - (e) IIP (Increased Insurance Premiums). The monthly cost of any additional flood or hazard insurance premiums to be incurred as a condition of the SBA disaster loan.
 - (f) CA (Cash Available For Additional Fixed Debt). The remainder after deducting the MFD and IIP from MAFD.
 - (g) One-third of CA. The target payment for the disaster loan.
- (3) Components of MFD.
 - (a) House Payment (PITI) or Rent Includes:
 - ◆ Rent and renter's insurance.
 - ◆ Mortgage payments (principal, interest, taxes, and insurance) on all non-business RE owned (business mortgage payments are addressed separately as business fixed debt). If there is no mortgage payment, include RE taxes and insurance.

- ◆ Payments on contracts to purchase (includes land sale contracts, contracts for deed, etc.) and any associated taxes and insurance.
- ◆ Condominium, Homeowner, or other Association fees.
- ◆ Manufactured Home installment payment (principal, interest, taxes and insurance); lot or space rent.
- ◆ Existing insurance premium, if not included in the mortgage payment (e.g., flood, earthquake, etc.).

(b) Fixed Debt Payments and Car Loans Include:

Any fixed debt with a balance equal to 10 or more monthly installments. This includes future obligations such as deferred student loans.

(1) You cannot include payments with fewer than 10 monthly installments unless you confirm their continuance. For example, if a car loan pays out in less than 10 months, you can only retain the payment if the applicant confirms their intent to replace the vehicle.

(2) You cannot include payments for non-existing debt unless you confirm the applicant's intent. For example, you cannot include a replacement vehicle payment, even if the current vehicle is old, unless the applicant:

- ◆ Confirms they are buying one;
- ◆ Provides some detail on the year, make, and model; and
- ◆ Approximates the installment amount.

(c) Payments on business fixed debt are not components of MFD.

(d) Credit Card and Other Revolving Charge Accounts.

If the application or CBR does not indicate a monthly payment, you must:

- (1) Contact the applicant and use the required minimum monthly payment on the current balance; or
- (2) Use the greater of 3 percent of the balance or \$20 if you cannot make contact.

NOTE: If an applicant states they pay credit card balances in full every month, you can exclude those payments from MFD provided:

- ◆ The amounts they say are paid in full each month are realistic given their overall financial condition; and
- ◆ Your case file includes justification.

(e) Extraordinary Continuing Expenses.

You must narrowly interpret this category and only include expenses/obligations if they are:

- (1) Significant (unusually large in proportion to applicant's income); and
- (2) Continuing (for at least 10 months); and
- (3) Mandatory (not discretionary and exclusive of items ordinarily treated as living expenses).

Examples include:

- ◆ Extraordinary medical expenses (e.g., dialysis, prescribed physical or rehabilitation therapy not covered by insurance);
- ◆ Extraordinary tuition expenses required by physical disabilities (e.g., blindness, mental retardation, etc.);
- ◆ The total amount of child care shown on the application if the applicant is a single parent (or if the applicants are working parents) provided child care is disclosed on the FTRs. If child care started after the filing of the most recent FTR, the amount disclosed on the SBA Form 5C is sufficient documentation; and
- ◆ Alimony or child support if disclosed on the FTR or documented by court order.

The following are not extraordinary expenses:

- ◆ Ordinary medical expenses (including medical insurance); and
- ◆ Tuition for schools and colleges (basic educational expenses).

(4) Effect of Living Expenses on FDM.

Living expenses do not affect the calculation of repayment ability under the FDM. They are included in the portion of gross income remaining after subtracting the MAFD. The FDM assumes applicants will adjust their living expenses to meet unusual obligations (e.g., vacations, excessive auto insurance costs, etc.).

c. Repayment Ability Determination: Standard MAFD percent.(1) If CA is positive, you must:

- (a) First attempt to amortize the eligible loan amount within 30 years using the target payment of one-third CA. If it amortizes, recommend those terms. (Remember to investigate refinancing eligibility if maturity is more than 15 years). Otherwise;

- (b) Attempt to amortize the eligible loan amount within 30 years using up to 100 percent of CA. If it amortizes, recommend those terms. (However, exercise caution before recommending a 30 year loan on a relatively small amount).
 - (2) If CA is positive but will not amortize the loan amount within 30 years, or if CA is negative, you must consider if:
 - (a) The applicant is eligible for refinancing (see paragraph 36); or
 - (b) The applicant is able to carry more than 40 percent MFD; and
 - (c) A limited approval is appropriate.
- d. Refinancing.
- If the applicant is eligible for refinancing, you must first calculate the maturity without refinancing using the target payment and the standard deferment. Then you apply the following:
- (1) If the loan will amortize in 15 years or less, you should not offer refinancing; or
 - (2) If the loan will amortize in more than 15 years, you may offer refinancing. The payment on the disaster loan, which includes refinancing, should be at least the same as the existing payment being refinanced. If the resulting maturity is less than 15 years, the applicant remains eligible for refinancing.
- e. Determination of Repayment Ability in Excess of 40 percent MAFD.

Generally, we do not consider applicants with GAI less than \$25,000 able to carry MFD in excess of 36 percent. Raising the MAFD percent for applicants with incomes of \$25,000 or less should be rare, and requires ADLP or designee approval.

Some applicants may be able to carry more than 40 percent MAFD. You must make this determination on a case-by-case basis. You cannot recommend a loan in excess of the standard MAFD percentage unless you justify it according to the guidance below. Where an approved loan requires the applicant to carry more than 45 percent of MAFD, you must forward the case file to the ADLP, or designee, for loan approval.

The following are acceptable justifications for exceeding the standard MAFD percentages:

- (1) High Income and Relatively Low Living Expenses.

For this purpose, "high income" means GAI is at least \$85,000. Low living expenses are generally related to applicants with few dependents, but not in every case. (It is possible for an average size family to have low living expenses.) You cannot use this justification unless both of these factors are present.

(2) Future Income Prospects.

This applies only to:

- ◆ Applicants whose earnings in their occupational field or industry are rapidly increasing (e.g., a doctor, who at the time of the disaster was in the first few years of a medical practice); or
- ◆ Applicants with excellent prospects for substantial future income increases (e.g., a skilled tradesperson such as an apprentice plumber who can reasonably expect to get a journeyman's license shortly).

(3) Demonstrated Ability to Handle Debt.

You can justify exceeding the standard MAFD percentage if the applicant has demonstrated the ability to devote a greater part of income to monthly fixed debts. You cannot use this justification unless the applicant has an excellent credit history. You can consider the ability demonstrated if the applicant continuously or historically paid more than 40 percent of GMI in fixed debts and maintained an excellent credit history. However, you cannot exceed the historically demonstrated level using this justification.

For example, assume an applicant demonstrated the ability to handle 42 percent MAFD. If the MAFD percentage after the SBA loan (with or without refinancing) exceeds 42 percent, you cannot use this justification.

(4) Accumulation of Sizeable Net Worth.

You can justify exceeding the standard MAFD percentage if the applicant has accumulated sizeable net worth and maintained an excellent credit history.

For this purpose, "sizeable net worth" means tangible net worth equal to or greater than 1 year's salary based on current and foreseeable annual income. You must be certain that the tangible net worth is not due to real estate appreciation, inheritances, or similar circumstances requiring no financial contribution from the applicant.

NOTE: The above justifications may "stand alone." You can recommend exceeding the standard MAFD percentage using any one of the reasons above, provided it is relevant and documented. However, ADLP approval is required if you recommend exceeding the standard MAFD percentage for any other reasons.

f. Limited Approval.

Before recommending a limited approval, you must:

- (1) Use 100 percent of CA.
- (2) Set the term at 30 years.

- (3) Consider and comment on the availability of assistance from IHP or other sources to make up the difference between the eligible amount and the limited loan amount; or
- (4) Document that the limited loan will permit sufficient repairs to render the house habitable if IHP or other assistance is not available (see paragraph 85).
- g. Determination of Interest Rate.
Complete the CET.
- h. Establishing Repayment Amount.
- (1) General Rule. You set the monthly payment at one-third CA, provided it amortizes the loan within 30 years using the standard deferment. Otherwise, you write a 30-year term and set the payment up to 100 percent of CA.
- (a) If the payment for a 30-year term exceeds 100 percent of CA, consider the possibility of exceeding the standard MAFD percentage, refinancing, or writing a limited approval. Otherwise, you must recommend decline 21.
- (b) If you exceed the standard MAFD percentage, the nonstandard 100 percent CA figure will be the payment and you should write the loan for 30 years. In some instances this may result in loan terms which appear less than practical for the applicant's financial condition, (e.g., small loans or loans to applicants with high income). In those cases, use your discretion in setting the term.
- (2) Exceptions to the General Rule.
- (a) Applicant Requests Payment Greater than 1/3 CA. You may grant this request if:
- ◆ The payment does not exceed 100 percent of CA; and
 - ◆ Your LOR clearly indicates it was at the applicant's request.
- (b) Setting Payments Below 1/3 of CA. You may set the payment below 1/3 CA only in cases of no credit elsewhere and
- ◆ Relatively low, fixed retirement, permanent disability, or similar income; or
 - ◆ Relatively low income (income is expected to remain low) where there is also a clear need to devote a large share of the income to living expenses (such as for a large number of dependents or to support known unusually heavy expenses); or
 - ◆ Low income and low fixed debt with an anticipation that necessary fixed debt will materially increase.

Your case file must justify setting a payment below 1/3 CA. You cannot do it if the income is not relatively low or if the reason tends to duplicate the FDM theory. For example, you cannot argue that living expenses are more than 60 percent of GMI without demonstrating how they are substantially greater than normal.

- (c) Adding \$50 to the Payment. Sometimes, the general rule establishes a payment, which is less than practical for the applicant's financial condition (e.g., small loans or loans to applicants with high income). In these cases, use your discretion in setting the terms. Within the standard CA, you can add up to \$50 per month to the payment to help shorten the maturity, but not merely to avoid small payment amounts. You must obtain the applicant's consent and chron the conversation if:

- ◆ You exceeded the standard MAFD%; and
- ◆ The term is less than 30 years.

- (d) Applicant Requests a Lesser Loan Amount. In this instance you must recalculate the payment based on 1/3 CA.

i. Loan Officer's Discretion.

The FDM is a guideline to help you determine repayment ability and terms. You must exercise your credit analysis skills, use discretion, and evaluate all information to be successful. Only your reasoned and thorough analysis of all relevant facts can help balance prudent lending of subsidized funds and sympathetic consideration of the disaster victims' needs.

APPENDIX 27

RESERVED

APPENDIX 28

(paragraph 40)

PRE-DISASTER MITIGATION LOAN PROGRAM (PDMLP)GENERAL

Effective June 16, 2003 SBA instituted the Pre-Disaster Mitigation Loan Program (PDMLP) as a pilot. This new program encourages disaster preparedness rather than relying solely on response and recovery. This new program allows ODA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their property from future disaster-related damage. The following addresses the differences from the existing disaster program and the changes that are being made to effectively implement the PDMLP.

- a. PDMLP Declaration Numbers - SBA will publish, and the **Centers** will receive a copy of a notice in the Federal Register announcing the availability of Pre-Disaster Mitigation Loans. The notice will designate a 30-day application filing period with a specific opening date and filing deadline, as well as the locations for obtaining and filing loan applications. The applicable interest rate for these loans will also be stated on the Federal Register notice.
- b. Filing Period – **All applications must be postmarked on or before the filing deadline.** SBA will not accept any applications postmarked after the filing deadline. All such loan applications must be returned to the loan applicant. SBA may announce additional filing periods each year, depending on the availability of program funds.
- c. Screening – **To apply for a Pre-Disaster Mitigation Loan, a business must submit a complete Pre-Disaster Mitigation Small Business Loan Application prior to the filing deadline.** Complete applications postmarked or presented to SBA after the filing period is announced in the Federal Register but prior to the filing period opening date may be held until the filing period begins. **However, these applications must be stamped as being received on the first day of the filing period.** Applications received and postmarked after the application filing period ends must be returned to the applicant. **The application should be reviewed based upon the filing requirements listed in subparagraph d.**
- d. Acceptable applications must contain the information listed under items 1 through 4 of the “Filing Requirements” as follows.
 - (1) **Application (SBA Form 5M) is substantially complete, signed, and dated by each applicant, IN INK.**
 - (2) **IRS Form 8821 signed and dated (from each required individual and/or entity – including affiliates).**
 - (3) **A statement from the local or State coordinator confirming the business’ proposed mitigation measure is in accordance with the specific priorities and goals of the Predisaster community (as defined by FEMA) in which the business is located.**
 - (4) **A cost estimate/contractor’s bid and outline of the proposed mitigation measure.**

- e. Accepted Pre-Disaster Mitigation Loan Applications must be input the same day they are received.

For this pilot program, the following changes will apply:

- (1) Personal Property, Real Estate, Refinancing, and Bridge loan uses of proceeds are not eligible.
 - (2) Pre-Disaster Mitigations loans will be low rate only.
 - (3) There are no declared counties under this program and the type of declaration will automatically default to the “Agency” declaration.
 - (4) ODA is required to report the results of this pilot program to Congress, once the pilot program is completed. The following information is necessary for that report: Type of Business (NAICS Code), Communities Impacted (City, County and/or State fields for the business address).
 - (5) The type of disaster damage being mitigating against must be indicated. The list of values will be:
 - (a) Wind Damage
 - (b) Flooding
 - (c) Earthquake
 - (d) Fire Protection
 - (e) Mudslides
 - (f) Other
 - (6) The total project cost must be included.
- f. Obligating Priority – As each loan request is approved, Headquarters staff will match the approved loan number and amount against the ODA Obligating Priority Log. Funds will be released when available. Please note that the obligating order will be determined using a random selection process and will not necessarily follow the loan numbers sequentially (especially on multiple case files accepted on the same day). ODA will notify the PDC on a daily basis of the loans that can be obligated.

Eligibility considerations include:

- (1) As of the date a business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA, that business, along with its affiliates, must be a small business concern as defined in 13 CFR Part 121.
- (2) The business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. In other words, if the business, along with its affiliates and owners, is found to have credit elsewhere, they are not eligible to be considered for a Pre-Disaster Mitigation Loan.
- (3) The business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year.

- (4) If the business is proposing a mitigation measure that protects against a flood hazard, the location of the business that is the subject of the mitigation measure must be located in a Special Flood Hazard Area (SFHA). PDMLP loan funds may be used for relocation of a business if their commercial real property (building) is located in an SFHA, and the business relocates outside the SFHA, but remains in the community.
- (5) For businesses that own and lease out real property, the mitigation measure must be for protection of a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).
- (6) A business together with its affiliates may borrow up to a maximum \$50,000 each fiscal year under this program.
- (7) A business receiving funds during one fiscal year may reapply for funds in a subsequent fiscal year.

Additional exclusions from program eligibility are consistent with our current physical disaster loan program and are included in 13 CFR §123.404 of the new regulations.

- g. Loss Verification – The loan applicant’s mitigation project cost estimate/contractor’s bid, etc. must be reviewed by the PDC Loss Verification Department for reasonableness in cost and reasonableness of the measure as it relates to appropriate hazard mitigation. The rule of two applies to this review and must include a summary of the LV’s recommendation as to reasonableness of cost and purpose. Generally, a site visit to make such determinations is not anticipated. However, management has the discretion to authorize a site visit if considered necessary.

The purpose of the LV’s review is to provide the loan officer with sufficient information to make a loan decision in the appropriate amount and for an appropriate purpose.

- h. Loan Processing and Obligating – Pre-Disaster Mitigation Loan Applications will be processed to a decision in accordance with normal processing procedures. Processed loan applications with decline and withdrawal decisions should be processed to their conclusion and the applicant notified of the processing decision in the usual manner. However, for loan *approval* decisions, the obligating mechanism has been modified to *block* obligation of these loans until Headquarters provides the PDC with a notification of “Obligating release.”

Our standard requirements will apply for loan terms, e.g., standard 4-month payment deferment period and prior injection of funds (for mitigation measures in excess of the maximum loan amount). Please note that loan applicants requesting funds for mitigation projects requiring more than the maximum loan amount of \$50,000 must provide documentation to show that the additional/excess funding for the project is in place prior to PDMLP loan approval. **NOTE: The total amount of the project will be used as the uncompensated physical loss for the credit elsewhere determination.**

- i. Obligating Order of Reconsiderations, Appeals, Increases and Reinstatements – Reconsiderations, Appeals, Increases and Reinstatement requests must be date-stamped as they are received, and entered into DCMS. If any of the above actions are approved, their obligating order will be determined by the last date received, and ultimately, in accordance with the obligating priority log. Headquarters will notify the PDC of the order in which each of these types of requests can be obligated.
- j. Loan Approvals Not Obligated Due to Lack of Funds – These loans will be given priority status, based on the original acceptance date, when more program funds become available. However, updated financial information should be required if more than 6 months has elapsed since the loan approval date. Again, Headquarters will maintain the record of obligating order of such applications and will advise the originating office accordingly.

Loan approvals not obligated due to lack of funds should be withdrawn. Withdraw code 65 (loan approved, but withdrawn due to lack of program funds) addresses this issue. A standard letter is available to advise approved loan applicants, whose loans cannot be obligated, that their application will be given priority status, based on the original acceptance date, once more funds become available. In addition, a standard letter is also available to advise such applicants that new funds are becoming available and that their loan application will be reactivated. The originating office should advise these applicants in this letter of the need for any additional financial information, confirmation that the project bid price still applies or any other discretionary information that is deemed necessary. Loan approvals “not obligated due to lack of funds” and reactivated when new funds become available will not be required to have their mitigation plans re-certified by a State of local certifying official.
- k. Loan Closing Documents – The LAA is changed to exclude references to disaster damage (both secured and unsecured) and to identify the loan as a Pre-Disaster Mitigation Loan.
- l. Disbursements – Standard disbursement procedures should be used.
- m. Progress Inspections – On-site progress inspections or final inspections of a completed project, must be performed on all loans of \$25,000 or more.

INDEX

This index uses key words which, when referenced to the indicated paragraph or appendix (A__), enable you to learn the eligibility, ineligibility, or explanation of the particular subject matter.

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