

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Associate Administrator for Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the FEDERAL REGISTER, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or processor in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the FEDERAL REGISTER.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed \$500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Associate Administrator for Government Contracting, Small Business

Administration, 409 3rd Street, SW., Washington, DC 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted is maintained in SBA's Web site at www.sba.gov/GC/approved.html. A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

[69 FR 29208, May 21, 2004]

PART 123—DISASTER LOAN PROGRAM

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AUTHORITY: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739; and Pub. L. 106-50, 113 Stat. 245.

SOURCE: 61 FR 3304, Jan. 31, 1996, unless otherwise noted.

Subpart A—Overview

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (c), and (f). Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change the rules in this part, without advance notice, by publishing interim emergency regulations in the FEDERAL REGISTER.

§ 123.2 What are disaster loans and disaster declarations?

SBA offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial

accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

§ 123.3 How are disaster declarations made?

(a) There are four ways in which disaster declarations are issued which make SBA disaster loans possible:

(1) The President declares a Major Disaster, or declares an emergency, and authorizes Federal Assistance, including individual assistance (Assistance to Individuals and Households Program).

(2) If the President declares a Major Disaster limited to public assistance only, a private nonprofit facility which provides non-critical services under guidelines of the Federal Emergency Management Agency (FEMA) must first apply to SBA for disaster loan assistance for such non-critical services before it could seek grant assistance from FEMA.

(3) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property. Such damage usually must meet the following tests:

(i) In any county or other smaller political subdivision of a State or U.S. possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

(ii) In any such political subdivision, at least three businesses each sustain

uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower, and, as a direct result of such physical damage, 25 percent or more of the work force in their community would be unemployed for at least 90 days; and

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245–0121). This request should be delivered to the SBA Disaster Area Office serving the region where the disaster occurred within 60 days of the date of the disaster.

(4) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.

(5) SBA makes an economic injury declaration in reliance on a state certification that at least 5 small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivisions in which the disaster occurred, and must be delivered (with supporting documentation) to the servicing SBA Disaster Area Office within 120 days of the disaster occurrence. The Administrator may, in a case of undue hardship, accept such request after 120 days have expired.

(b) SBA publishes notice of any disaster declaration in the FEDERAL REGISTER. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist victims in applying for disaster loans. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes beyond the control of the applicant.

[61 FR 3304, Jan. 31, 1996, as amended at 64 FR 13667, Mar. 22, 1999; 67 FR 64518, Oct. 21, 2002]

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions, provided, however, that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster loans in counties contiguous to the disaster area. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

[61 FR 3304, Jan. 31, 1996, as amended at 67 FR 64519, Oct. 21, 2002]

§ 123.5 What kinds of loans are available?

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service

that has been determined to be obscene by a court.

§ 123.7 Are there restrictions on how disaster loans can be used?

You must use disaster loans to restore or replace your primary home (including a mobile home used as a primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan. You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. If your loan is made in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you.

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.

(b) If SBA learns that you may have misapplied your loan proceeds, SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that

you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution or civil or administrative action.

§ 123.10 What happens if I cannot use my insurance proceeds to make repairs?

If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs. If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of \$10,000 or less, or an economic injury disaster loan of \$5,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

(a) Sometimes a borrower, including affiliates as defined in part 121 of this title, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed \$10,000 and all economic injury disaster loans to see if they exceed \$5,000.

(b) SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

§ 123.12 Are books and records required?

You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of 3 years after you receive your final disbursement of loan proceeds. If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. You must retain applicable books and records for 3 years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first. You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must also permit SBA and any participating financial institution to inspect and appraise your assets. (OMB Approval No. 3245-0110.)

§ 123.13 What happens if my loan application is denied?

(a) If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than size (not being a small business) has the right to present information to overcome the reason or reasons for the decline and to request reconsideration in writing. (OMB Approval No. 3245-0122.)

(b) Any decline due to size can only be appealed as set forth in part 121 of this chapter.

(c) Any request for reconsideration must be received by the SBA office that declined the original application within six months of the date of the declined notice. After six months, a new loan application is required.

(d) A request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for reconsideration of a business loan application must also be accompanied by current business financial statements.

(e) If SBA declines your application a second time, you have the right to appeal in writing to the Area Director's Office. All appeals must be received by the office that declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must give specific reasons why the decline action should be reversed.

(f) The decision of the Area Director is final unless:

(1) The Area Director does not have authority to approve the requested loan;

(2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or

(3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations, alleged improper acts by SBA personnel or others in processing the application, and conflicting policy interpretations between two Area Offices.

§ 123.14 How does the Federal Debt Collection Procedures Act of 1990 apply?

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States generally is not eligible to receive physical and economic injury disaster loans. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans upon a demonstration of good cause. Good cause means a written representation by you under oath which convinces SBA that:

(1) The declared disaster was a major contributing factor to the delinquency which led to the judgment lien, regardless of when the original debt was incurred; or

(2) The disaster directly prevented you from fulfilling the terms of an agreement with SBA or any other Federal Government entity to satisfy its

pre-disaster judgment lien; in this situation, the judgment creditor must certify to SBA that you were complying with the agreement to satisfy the judgment lien when the disaster occurred; or

(3) Other circumstances exist which would justify a waiver.

(b) The waiver determination by the Associate Administrator for Disaster Assistance, or designee, is a final, non-appealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

§ 123.15 What if I change my mind?

If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR part 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

§ 123.16 How are loans administered and serviced?

(a) If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA. The SBA rules on servicing are found in part 120 of this chapter.

(b) If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

§ 123.17 Do other Federal requirements apply?

As a condition of disbursement, you must be in compliance with certain requirements relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations, as set forth in §§ 120.170 through 120.175 of this chapter.

§ 123.18 Can I request an increase in the amount of a physical disaster loan?

SBA will consider your request for an increase in your loan if you can show that the eligible cost of repair or replacement of damages increased because of events occurring after the loan approval that were beyond your control. An eligible cost is one which is related to the disaster for which SBA issued the original loan. For example, if you discover hidden damage within a reasonable time after SBA approved your original disaster loan and before repair, renovation, or reconstruction is complete, you may request an increase. Or, if applicable building code requirements were changed since SBA approved your original loan, you may request an increase in your loan amount.

[63 FR 15072, Mar. 30, 1998]

§ 123.19 May I request an increase in the amount of an economic injury loan?

SBA will consider your request for an increase in the loan amount if you can show that the increase is essential for your business to continue and is based on events occurring after SBA approved your original loan which were beyond your control. For example, delays may have occurred beyond your control which prevent you from resuming your normal business activity in a reasonable time frame. Your request for an increase in the loan amount must be related to the disaster for which the SBA economic injury disaster loan was originally made.

[63 FR 15072, Mar. 30, 1998]

§ 123.20 How long do I have to request an increase in the amount of a physical disaster loan or an economic injury loan?

You should request a loan increase as soon as possible after you discover the need for the increase, but not later than two years after SBA approved your physical disaster or economic injury loan. After two years, the SBA Associate Administrator for Disaster Assistance (AA/DA) may waive this limitation after finding extraordinary and unforeseeable circumstances.

[63 FR 15073, Mar. 30, 1998]

§ 123.21 What is a mitigation measure?

A mitigation measure is something done for the purpose of protecting real and personal property against disaster related damage. You may implement mitigation measures after a disaster occurs (post-disaster) to protect against recurring disaster related damage, or before a disaster occurs (pre-disaster) to protect against future disaster related damage. Examples of mitigation measures include building retaining walls, sea walls, grading and contouring land, elevating flood prone structures, relocating utilities, or retrofitting structures to protect against high winds, earthquakes, flood, wildfires, or other physical disasters. Section 123.107 specifically addresses post-disaster mitigation for home disaster loans, and § 123.204 specifically addresses post-disaster mitigation for businesses. Sections 123.400 through 123.412 specifically address pre-disaster mitigation.

[67 FR 62337, Oct. 7, 2002]

Subpart B—Home Disaster Loans**§ 123.100 Am I eligible to apply for a home disaster loan?**

(a) You are eligible to apply for a home disaster loan if you:

(1) Own and occupy your primary residence and have suffered a physical loss to your primary residence, personal property, or both; or

(2) Do not own your primary residence, but have suffered a physical loss to your personal property. Family members sharing a residence are eligible if they are not dependents of the owners of the residence.

(b) Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

§ 123.101 When am I not eligible for a home disaster loan?

You are not eligible for a home disaster loan if:

(a) You have been convicted, during the past year, of a felony during and in

connection with a riot or civil disorder or other declared disaster;

(b) You acquired voluntarily more than a 50 percent ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception), these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan. The one exception applies to amounts received under the Individuals and Household Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan;

(d) SBA determines that you assumed the risk (for example, by not maintaining flood insurance as required by an earlier SBA disaster loan when the current loss is also due to flood);

(e) Your damaged property is a secondary home (although if you rented the property out before the disaster and the property would not constitute a “residence” under the provisions of Section 280A of the Internal Revenue Code (26 U.S.C. 280A), you may be eligible for a physical disaster business loan);

(f) Your damaged property is the type of vehicle normally used for recreational purposes, such as motorhomes, aircraft, and boats;

(g) Your damaged property consists of cash or securities;

(h) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;

(i) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;

(j) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

(k) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and (without a significant business justification) is located seaward of mean high tide or entirely in or over water; or

(l) You voluntarily decide to relocate outside the business area in which the disaster has occurred, and there are no special or unusual circumstances leading to your decision (business area means the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or equivalent political entity in which your damaged home is located).

[61 FR 3304, Jan. 31, 1996, as amended at 67 FR 64519, Oct. 21, 2002]

§ 123.102 What circumstances would justify my relocating?

SBA may approve a loan if you intend to relocate outside the business area in which the disaster has occurred if your relocation is caused by such special or unusual circumstances as:

(a) Demonstrable risk that the business area will suffer future disasters;

(b) A change in employment status (such as loss of job, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs);

(c) Medical reasons; or

(d) Special family considerations which necessitate a move outside of the business area.

§ 123.103 What happens if I am forced to move from my home?

If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. In this case, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses of personal property and eligible refinancing.

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed 4 percent per annum. Credit elsewhere means that, with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property. Under prior legislation, some SBA disaster loans had split interest rates. On any such loan, repayments of principal are applied first to that portion of the loan with the lowest interest rate.

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) For all disasters occurring on or after October 26, 1993, there are limits on how much money you can borrow for particular purposes:

(1) \$40,000 for repair or replacement of household and personal effects;

(2) \$200,000 for repair or replacement of a primary residence (including upgrading in order to meet minimum standards of safety and decency or current building code requirements). Repair or replacement of landscaping and/or recreational facilities cannot exceed \$5,000;

(3) \$200,000 for eligible refinancing purposes; and

(4) 20 percent of the loan amount (not including refinancing) up to a maximum of \$48,000 for mitigation (see § 123.107).

(b) You may not use loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay equal monthly installments of principal and interest, beginning five months from the date of

the loan, as shown on the Note securing the loan. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of home disaster loans.

§ 123.106 What is eligible refinancing?

(a) If your home (primary residence) is totally destroyed or substantially damaged, and you do not have credit elsewhere, SBA may allow you to borrow money to refinance recorded liens or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

(1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or

(2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of \$200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 How much can I borrow for post-disaster mitigation for my home?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved home disaster loan to repair or replace your damaged primary residence and personal property.

[67 FR 62337, Oct. 7, 2002]

Subpart C—Physical Disaster Business Loans

§ 123.200 Am I eligible to apply for a physical disaster business loan?

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you (or any principal of the business) fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business entity (whether in the form of a corporation, limited liability company, partnership, or sole proprietorship) is engaged in both agricultural enterprise and a non-agricultural business venture. If the agricultural enterprise part

of your business entity has suffered a physical disaster, that enterprise is not eligible for SBA physical disaster assistance. If the non-agricultural business venture of your entity has suffered physical disaster damage, that part of your business operation would be eligible for SBA physical disaster assistance. If both the agricultural enterprise part and the non-agricultural business venture have incurred physical disaster damage, only the non-agricultural business venture of your business entity would be eligible for SBA physical disaster assistance.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

- (1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;
- (2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;
- (3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;
- (4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;
- (5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expenses for your business in the business area;
- (6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and
- (7) Other factors which undermine the economic viability of your business area.

(d) You are not eligible if your business is engaged in any illegal activity.

(e) You are not eligible if you are a government owned entity (except for a business owned or controlled by a Native American tribe).

(f) You are not eligible if your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

[61 FR 3304, Jan. 31, 1996, as amended at 62 FR 35337, July 1, 1997; 63 FR 46644, Sept. 2, 1998]

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or \$1.5 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the \$1.5 million limitation. A major source of employment is a business concern which has one or more locations in the disaster area which:

(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 of the work force in an industry within the disaster area and, if the concern is a non-manufacturing 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.

(b) SBA will consider waiving the \$1.5 million loan limit only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in

excess of \$1.5 million is necessary to re-open or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

(2) You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described in § 123.104) to alleviate your physical damage and economic injury.

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business property must be totally destroyed or substantially damaged, which means:

(1) 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 land) and damaged machinery and equipment; or

(2) 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 land) and damaged machinery and equipment.

(d) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed \$5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

[61 FR 3304, Jan. 31, 1996, as amended at 63 FR 46644, Sept. 2, 1998]

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, have credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability, but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

§ 123.204 How much can your business borrow for post-disaster mitigation?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved physical disaster business loan to repair or replace your damaged business real estate and other business assets.

[67 FR 62337, Oct. 7, 2002]

Subpart D—Economic Injury Disaster Loans

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for Hurricanes Katrina, Rita, and Wilma, for which size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005), you and your affiliates and

principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are 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);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

[61 FR 3304, Jan. 31, 1996, as amended at 67 FR 11880, Mar. 15, 2002; 70 FR 72595, Dec. 6, 2005]

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

[61 FR 3304, Jan. 31, 1996, as amended at 63 FR 46644, Sept. 2, 1998]

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event;

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Subpart E—Pre-Disaster Mitigation Loans

SOURCE: 67 FR 62337, Oct. 7, 2002, unless otherwise noted.

§ 123.400 What is the Pre-Disaster Mitigation Loan Program?

The Pre-Disaster Mitigation Loan Program allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. This program supports the Federal Emergency Management Agency (FEMA's) Pre-

Disaster Mitigation Program. This pilot program is authorized for 5 fiscal years (October–September), from 2000 through 2004, and has only been approved for limited funding. Therefore, approved loan requests are funded on a first come, first served basis up to the limit of program funds available (see § 123.411).

§ 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?

To be included in a pre-disaster mitigation loan application, each of your business' mitigation measures must satisfy the following criteria:

(a) The mitigation measure, as described in the application, must serve the purpose of protecting your commercial real property (building) or leasehold improvements or contents from damage that may be caused by future disasters; and

(b) The mitigation measure must conform to the priorities and goals of the State or local government's mitigation plan for the community in which the business subject to the measure is located. To show that this factor is satisfied your business must submit to SBA, as a part of your complete application, a written statement from a State or local emergency management coordinator confirming this fact (see § 123.408). Contact your regional FEMA office for a list of your State's emergency management coordinators or visit the FEMA Web site at <http://www.fema.gov>.

§ 123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?

Yes, you may request a pre-disaster mitigation loan for the relocation of your business if:

(a) Your commercial real property (building) is located in a SFHA (Special Flood Hazard Area); and

(b) Your business relocates outside the SFHA but remains in the same participating pre-disaster mitigation community. Contact your regional FEMA office for a listing of communities participating in the Pre-Disaster Mitigation Program and SFHAs or visit the FEMA Web site at <http://www.fema.gov>.

§ 123.403 When is your business eligible to apply for a pre-disaster mitigation loan?

To be eligible to apply for a pre-disaster mitigation loan your business must meet each of the following criteria:

(a) Your business, which is the subject of the pre-disaster mitigation measure, must be located in a participating pre-disaster mitigation community. Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one participating pre-disaster mitigation community. Contact your regional FEMA office to find out the locations of participating pre-disaster mitigation communities or visit the FEMA Web site at <http://www.fema.gov>;

(b) If your business is proposing a mitigation measure that protects against a flood hazard, the location of your business which is the subject of the mitigation measure must be located in a Special Flood Hazard Area (SFHA). Contact your FEMA regional office to find out the locations of SFHAs or visit the FEMA Web site at <http://www.fema.gov>;

(c) As of the date your business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA (see § 123.408 for what SBA's considers to be a complete application), your business, along with its affiliates, must be a small business concern as defined in part 121 of this chapter. The definition of small business concern encompasses sole proprietorships, partnerships, corporations, limited liability entities, and other legal entities recognized under State law;

(d) Your business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year before submitting its application;

(e) Your business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. SBA makes this determination based on the information your business submits as a part of its application; and

(f) If your business is owning and leasing out real property, the mitigation measures 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).

§ 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?

Your business is ineligible to apply for a pre-disaster mitigation loan if your business (including its affiliates) satisfies any of the following conditions:

(a) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense, or has been indicted for a felony or a crime of moral turpitude;

(b) Your business' only interest in the business property is in the form of a security interest, mortgage, or deed of trust;

(c) The building, which is the subject of the mitigation measure, was newly constructed or substantially improved on or after February 9, 1989, and (without significant business justification) is located seaward of mean high tide or entirely in or over water;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged (see § 121.107 of this chapter) in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your business is not an agricultural enterprise, it may apply for a pre-disaster mitigation loan, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural activities;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the

presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business engages in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(l) Your business is a loan packager that earns more than one-third of its gross annual revenue from packaging SBA loans;

(m) Your business principally engages in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(n) Your business is primarily engaged in political or lobbying activities.

§ 123.405 How much can your business borrow with a pre-disaster mitigation loan?

Your business, together with its affiliates, may borrow up to \$50,000 each fiscal year. This loan amount may be used to fund only those projects that were a part of your business' approved loan request. SBA will consider mitigation measures costing more than \$50,000 per year if your business can identify, as a part of its Pre-Disaster Mitigation Small Business Loan Application, sources that will fund the cost above \$50,000.

§ 123.406 What is the interest rate on a pre-disaster mitigation loan?

The interest rate on a pre-disaster mitigation loan will be fixed at 4 percent per annum or less. The exact interest rate will be stated in the FEDERAL REGISTER notice announcing each filing period (see § 123.407).

§ 123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get an application?

SBA will publish 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. In addition to the FEDERAL REGISTER, SBA will coordinate with FEMA, and will issue press releases to the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications postmarked after the filing deadline; however, SBA may announce additional application periods each year depending on the availability of program funds.

§ 123.408 How does your business apply for a pre-disaster mitigation loan?

To apply for a pre-disaster mitigation loan your business must submit a complete Pre-Disaster Mitigation Small Business Loan Application (application) within the announced filing period. Complete applications mailed to SBA and postmarked within the announced filing period will be accepted. The complete application serves as your business' loan request. A complete application supplies all of the filing requirements specified on the application form including a written statement from the local or State coordinator confirming:

(a) The business that is the subject of the mitigation measure is located within the participating pre-disaster mitigation community; and

(b) The mitigation measure is in accordance with the specific priorities and goals of the local participating pre-disaster mitigation community in which the business is located. (The local or State coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters).

§ 123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?

(a) SBA will consider a loan request for funding if, after reviewing a complete application, SBA determines that it meets the following selection criteria:

(1) Your business satisfies the requirements of §§ 123.401, 123.402 and 123.403;

(2) None of the conditions specified in § 123.404 apply to your business, its affiliates, or principal owners;

(3) Your business has submitted a reasonable cost estimate for the proposed mitigation measure and has chosen to undertake a mitigation measure that is likely to accomplish the desired mitigation result (SBA's determination of this point is not a guaranty that the project will prevent damage in future disasters);

(4) Your business is creditworthy; and

(5) There is a reasonable assurance of loan repayment in accordance with the terms of a loan agreement.

(b) SBA will notify you in writing if your loan request does not meet the criteria in this section.

§ 123.410 Which loan requests will SBA fund?

SBA will date stamp each application (loan request) as it is received. SBA will fund loan requests which meet the selection criteria specified in § 123.409 on a first come, first served basis using this date stamp, until it has allocated all available program funds. Multiple applications received on the same day will be ranked by a computer based random selection system to determine their funding order. SBA will notify you in writing of its funding decision.

§ 123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?

If SBA determines that your business' loan request meets the selection criteria of § 123.409 but we are unable to fund it because we have already allocated all available program funds, your request will be given priority status, based on the original acceptance date, once more program funds become available. However, if more than 6 months pass since SBA determined to fund your request, SBA may request updated or additional financial information.

§ 123.412 What happens if SBA declines your business' pre-disaster mitigation loan request?

If SBA declines your business' loan request, SBA will notify your business in writing giving specific reasons for decline. If your business disagrees with SBA's decision, it may respond in accordance with § 123.13. If SBA reverses its decision, SBA will use the date it received your business' last request for reconsideration or appeal as the basis for determining the order of funding.

Subpart F—Military Reservist Economic Injury Disaster Loans

SOURCE: 66 FR 38530, July 25, 2001, unless otherwise noted.

§ 123.500 Definitions.

The following terms have the same meaning wherever they are used in this subpart:

(a) *Essential employee* is an individual (whether or not an owner of a small business) whose managerial or technical expertise is critical to the successful day-to-day operations of a small business.

(b) *Military reservist* is a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(c) *Period of military conflict* means:

(1) A period of war declared by the Congress,

(2) A period of national emergency declared by the Congress or by the President, or

(3) A period of contingency operation, as defined in 10 U.S.C. 101(a).

(d) *Principal owner* is a person or entity which owns 20 percent or more of the small business.

(e) *Substantial economic injury* means an economic harm to the small business such that it cannot:

(1) Meet its obligations as they mature,

(2) Pay its ordinary and necessary operating expenses, or

(3) Market, produce or provide a product or service ordinarily marketed, produced or provided by the business. Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

§ 123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan?

Your business is eligible to apply for a Military Reservist EIDL if:

(a) It is a small business as defined in 13 CFR part 121 when the essential employee was called to active duty,

(b) The owner of the business is a military reservist and an essential employee or the business employs a military reservist who is an essential employee,

(c) The essential employee has been called-up to active military duty during a period of military conflict existing on or after March 24, 1999,

(d) The business has suffered or is likely to suffer substantial economic injury as a result of the absence of the essential employee, and

(e) You and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

[66 FR 38530, July 25, 2001, as amended at 67 FR 64519, Oct. 21, 2002]

§ 123.502 When is your business ineligible to apply for a Military Reservist EIDL?

Your business is ineligible for a Military Reservist EIDL if it, together with its affiliates, is subject to any of the following conditions:

(a) Any of your business' principal owners has been convicted, during the past year, of a felony during and in connection with a riot or civil disorder;

(b) You have assumed the risk associated with employing the military reservist, as determined by SBA (for example, hiring the "essential employee" after the employee has received call-up orders or been notified that they are imminent);

(c) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. (See 13 CFR 121.107, "How does SBA determine a

concern's primary industry?") Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of the business is not an agricultural enterprise, it may apply for a Military Reservist EIDL, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural enterprises;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than an insignificant gross revenue through the sale of products or services, or through the presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business is engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business is not a small business concern;

(l) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(m) Your business is a loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(n) Your business' principal activity is teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(o) Your business' principal activity is political or lobbying activities.

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date your essential employee receives official call-up orders and ending 90 days after the date the essential employee is discharged or released from active duty.

§ 123.504 How do you apply for a Military Reservist EIDL?

To apply for a Military Reservist EIDL you must complete a SBA Military Reservist EIDL application package (SBA Form 5R and supporting documentation *can be obtained through SBA's Disaster Area Office*) including:

(a) A copy of the essential employee's official call-up orders for active duty showing the date of call up, and if known, the date of release from active duty;

(b) A statement from the business owner that the reservist is essential to the successful day-to-day operations of the business (detailing the employee's duties and responsibilities and explaining why these duties and responsibilities can't be completed in the essential employee's absence);

(c) A certification by the essential employee supporting that he or she concurs with the business owner's statement as described in paragraph (b) of this section;

(d) A written explanation and financial estimate of how the call-up of the essential employee has or will result in economic injury to your business;

(e) The steps your business is taking to alleviate the economic injury; and

(f) The business owners' certification that the essential employee will be offered the same or a similar job upon the employee's return from active duty.

§ 123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?

If you are both an essential employee and the owner of the small business and you started active duty before applying for an Military Reservist EIDL, a person who has a power of attorney with the authority to borrow and make other related commitments on your behalf, may complete and submit the EIDL loan application package for you.

§ 123.506 How much can you borrow under the Military Reservist EIDL Program?

You can borrow an amount equal to the substantial economic injury you have suffered or are likely to suffer

until normal operations resume as a result of the absence of one or more essential employees called to active duty, up to a maximum of \$1.5 million

§ 123.507 Under what circumstances will SBA consider waiving the \$1.5 million loan limit?

SBA will consider waiving the \$1.5 million dollar limit if you can certify to the following conditions and SBA approves of such certification based on the information supplied in your application:

(a) Your small business is a major source of employment. A major source of employment:

(1) Employs 10 percent or more of the work force within the commuting area of the geographically identifiable community (no larger than a county) in which the business employing the essential employee is located, provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employs 5 percent of the work force in an industry within such commuting area and, if the small business is a non-manufacturing small business, employs no less than 50 employees in the same commuting area, or if the small business is a manufacturing small business, employs no less than 150 employees in the commuting area; or

(3) Employs no less than 250 employees within such commuting area;

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active duty during a period of military conflict, and a loan in excess of \$1.5 million is necessary to reopen or keep open the small business; and

(c) Your small business has used all reasonably available funds from the small business, its affiliates, its principal owners and all available credit elsewhere to alleviate the small business' economic injury. Credit elsewhere means financing from non-Federal sources on reasonable terms given your available cash flow and disposable assets which SBA believes your small business, its affiliates and principal owners could obtain.

§ 123.508 How can you use Military Reservist EIDL funds?

Your small business can use Military Reservist EIDL to:

(a) Meet obligations as they mature,
(b) Pay ordinary and necessary operating expenses, or

(c) Enable the business to market, produce or provide products or services ordinarily marketed, produced, or provided by the business, which cannot be done as a result of the essential employee's military call-up.

§ 123.509 What can't you use Military Reservist EIDL funds for?

Your small business can not use Military Reservist EIDL funds for purposes described in § 123.303(b) (See § 123.303, "How can my business spend my economic injury disaster loan?").

§ 123.510 What if you don't use your Military Reservist EIDL funds as authorized?

If your small business does not use Military Reservist EIDL funds as authorized by § 123.508, then § 123.9 applies (See § 123.9, "What happens if I don't use loan proceeds for the intended purpose?").

§ 123.511 How will SBA disburse Military Reservist EIDL funds?

SBA will disburse your funds in quarterly installments (unless otherwise specified in your loan authorization agreement) based on a continued need as demonstrated by comparative financial information. On or about 30 days before your scheduled fund disbursement, SBA will request ordinary and usual financial statements (including balance sheets and profit and loss statements). Based on this information, SBA will assess your continued need for disbursements under this program. Upon making such assessment, SBA will notify you of the status of future disbursements.

§ 123.512 What is the interest rate on a Military Reservist EIDL?

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.

Subpart G—Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

SOURCE: 66 FR 53331, Oct. 22, 2001, unless otherwise noted.

§ 123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?

No. Notwithstanding § 123.4, SBA may make economic injury disaster loans outside the declared disaster areas and the contiguous geographic areas to small business concerns that have suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001.

§ 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

(a) If your business has suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related federal action taken between September 11, 2001 and October 22, 2001, you are eligible to apply for an economic injury disaster loan under this subpart.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on the date SBA accepts your application for processing (and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonable available

funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include small agricultural cooperatives and producer cooperatives.

[66 FR 53331, Oct. 22, 2001, as amended at 67 FR 11880, Mar. 15, 2002]

§ 123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?

Your business is not eligible for an economic injury disaster loan under this subpart if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental on September 11, 2001);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

§ 123.603 What is the interest rate on an economic injury disaster loan under this subpart?

Your economic injury disaster loan under this subpart will have an interest rate of 4 percent per annum or less.

§ 123.604 How can my business spend my economic injury disaster loan under this subpart?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that

which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to September 11, 2001;

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers, or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

§ 123.605 How long do I have to apply for a loan under this subpart?

You have until January 22, 2002 to apply for a loan under this subpart. Your application must be postmarked no later than this date. SBA has the discretion, for good cause, to extend the application deadline by publication of a notice in the FEDERAL REGISTER.

§ 123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?

Yes. Notwithstanding § 123.20, you may request an increase in the amount of an economic injury disaster loan under this subpart not later than one year after the date SBA approves your initial request.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Subpart A—8(a) Business Development

PROVISIONS OF GENERAL APPLICABILITY

Sec.

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124.3 What definitions are important in the 8(a) BD program?

ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE 8(a) BUSINESS DEVELOPMENT PROGRAM

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124.102 What size business is eligible to participate in the 8(a) BD program?

124.103 Who is socially disadvantaged?

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124.108 What other eligibility requirements apply for individuals or businesses?

124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?

124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

APPLYING TO THE 8(a) BD PROGRAM

124.201 May any business submit an application?

124.202 Where must an application be filed?

124.203 What must a concern submit to apply to the 8(a) BD program?

124.204 How does SBA process applications for 8(a) BD program admission?

124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

124.206 What appeal rights are available to an applicant that has been denied admission?

124.207 Can an applicant reapply for admission to the 8(a) BD program?

EXITING THE 8(a) BD PROGRAM

124.301 What are the ways a business may leave the 8(a) BD program?

124.302 What is early graduation?

124.303 What is termination?

124.304 What are the procedures for early graduation and termination?

124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

BUSINESS DEVELOPMENT

124.401 Which SBA field office services a Participant?