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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 Director, Office of 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; 78 FR 61132, Oct. 2, 2013; 81 FR 34260, May 31, 2016]

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

A list of classes of products for which waivers for the Nonmanufacturer Rule have been granted is maintained in SBA Web site at: *http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.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, as amended at 74 FR 46313, Sept. 9, 2009]

§ 121.1206 How will potential offerors be notified of applicable waivers?

(a) Contracting officers must provide written notification to potential offerors of any waivers being applied to a specific acquisition, whether it is a class waiver or a contract specific waiver. This notification must be provided at the time a solicitation is issued. If the notification is provided after a solicitation is issued, the contracting officer must provide potential offerors a reasonable amount of additional time to respond to the solicitation.

(b) If a contracting officer does not provide notice, and additional reasonable time for responses when required, then the waiver cannot be applied to the solicitation. This applies to both class waivers and individual waivers.

[81 FR 34260, May 31, 2016]

APPENDIX A TO PART 121—PAYCHECK PROTECTION PROGRAM SAMPLE ADDENDUM A

[Sample]

ADDENDUM A

✓ The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because the Applicant has made a reasonable, good faith determination that the Applicant qualifies for a religious exemption under 13 CFR 121.103(b)(10), which says that ''[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization . . . if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.''

[85 FR 20821, Apr. 15, 2020]

PART 123—DISASTER LOAN PROGRAM

Subpart A—Overview

Sec.

123.1 What do these rules cover?
123.2 What are disaster loans and disaster declarations?
123.3 How are disaster declarations made?
123.4 What is a disaster area and why is it important?
123.5 What kinds of loans are available?
123.6 What does SBA look for when considering a disaster loan applicant?
123.7 Are there restrictions on how disaster loans can be used?
123.8 Does SBA charge any fees for obtaining a disaster loan?
123.9 What happens if I don't use loan proceeds for the intended purpose?
123.10 What happens if I cannot use my insurance proceeds to make repairs?
123.11 Does SBA require collateral for any of its disaster loans?
123.12 Are books and records required?
123.13 What happens if my loan application is denied?
123.14 How does the Federal Debt Collection Procedures Act of 1990 apply?
123.15 What if I change my mind?
123.16 How are loans administered and serviced?
123.17 Do other Federal requirements apply?
123.18 Can I request an increase in the amount of a physical disaster loan?
123.19 May I request an increase in the amount of an economic injury loan?
123.20 How long do I have to request an increase in the amount of a physical disaster loan or an economic injury loan?
123.21 What is a mitigation measure?

Subpart B—Home Disaster Loans

123.100 Am I eligible to apply for a home disaster loan?
123.101 When am I not eligible for a home disaster loan?
123.102 What circumstances would justify my relocating?
123.103 What happens if I am forced to move from my home?
123.104 What interest rate will I pay on my home disaster loan?
123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?
123.106 What is eligible refinancing?
123.107 How much can I borrow for post-disaster mitigation for my home?
123.108 How do the SBA disaster loan program and the FEMA grant programs interact?

Subpart C—Physical Disaster Business Loans

123.200 Am I eligible to apply for a physical disaster business loan?
123.201 When am I not eligible to apply for a physical disaster business loan?
123.202 How much can my business borrow with a physical disaster business loan?
123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?
123.204 How much can your business borrow for post-disaster mitigation?

Subpart D—Economic Injury Disaster Loans

123.300 Is my business eligible to apply for an economic injury disaster loan?
123.301 When would my business not be eligible to apply for an economic injury disaster loan?
123.302 What is the interest rate on an economic injury disaster loan?
123.303 How can my business spend my economic injury disaster loan?

Subpart E [Reserved]

Subpart F—Military Reservist Economic Injury Disaster Loans

123.500 Definitions.
123.501 Under what circumstances is your business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?
123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?
123.503 When can you apply for a Military Reservist EIDL?
123.504 How do you apply for a Military Reservist EIDL?
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?
123.506 How much can you borrow under the Military Reservist EIDL Program?
123.507 Under what circumstances will SBA consider waiving the $2 million loan limit?
123.508 How can you use Military Reservist EIDL funds?
123.509 What can't you use Military Reservist EIDL funds for?
123.510 What if you don't use your Military Reservist EIDL funds as authorized?
123.511 How will SBA disburse Military Reservist EIDL funds?
123.512 What is the interest rate on a Military Reservist EIDL?
123.513 Does SBA require collateral on its Military Reservist EIDL?

Subpart G [Reserved]

Subpart H—Immediate Disaster Assistance Program

123.700 What is the Immediate Disaster Assistance Program?
123.701 What is the application procedure for an IDAP loan?
123.702 What are the eligibility requirements for an IDAP loan?
123.703 What are the terms of an IDAP loan?
123.704 Are there restrictions on how IDAP loan funds may be used?
123.705 Are there any fees associated with IDAP loans?
123.706 What are the requirements for IDAP lenders?

AUTHORITY: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), and 657n.

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), (d), and (f); and 15 U.S.C. 657n. 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.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60597, Oct. 1, 2010]

§ 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. SBA also offers interim guaranteed disaster loans, in participation with financial institutions, to affected small businesses (''IDAP loans''). 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. However, *for purposes of economic injury disaster loans only,* they do include droughts and below average water levels in the Great Lakes or on any body of water in the United States that supports commerce by small businesses. Sudden 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.

[61 FR 3304, Jan. 31, 1996, as amended at 71 FR 75409, Dec. 15, 2007; 75 FR 60597, Oct. 1, 2010; 81 FR 67903, Oct. 3, 2016]

§ 123.3 How are disaster declarations made?

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

(1) The President declares a Major Disaster 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 predisaster 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 Disaster Assistance Field Operations Center serving the jurisdiction within 60 days of the date of the disaster. The addresses, phone numbers, and jurisdictions served by the field operations centers are published in the FEDERAL REGISTER.

(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 five 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 subdivision in which the disaster occurred, and must be delivered (with supporting documentation) to the Disaster Assistance Field Operations Center serving the jurisdiction within 120 days of the disaster occurrence. When a Governor certifies with respect to a drought or to below average water levels, the supporting documentation must include findings which show that conditions during the incident period meet or exceed the U.S. Drought Monitor (USDM) standard of ''severe'' (Intensity level D–2 to D–4). The USDM may be found at *http://drought.unl.edu/dm/monitor*. With respect to below average water levels, the supplementary information accompanying the certification must include findings which establish long-term average water levels based on recorded historical data, show that current water levels are below long-term average levels, and demonstrate that economic injury has occurred as a direct result of the low water levels. Not later than 30 days after SBA receives a certification by a Governor, it shall respond in writing with its decision and its reasons.

(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; 71 FR 63676, Oct. 31, 2006; 71 FR 75409, Dec. 15, 2006; 73 FR 54675, Sept. 23, 2008; 81 FR 67903, Oct. 3, 2016]

§ 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 and IDAP 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 or IDAP loans in counties contiguous to the disaster area. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical, economic injury and, in some cases, IDAP 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; 75 FR 60597, Oct. 1, 2010]

§ 123.5 What kinds of loans are available?

(a) *Disaster loans authorized under Section 7(b).* SBA offers four kinds of disaster loans as authorized by Section 7(b) of the Small Business Act: Physical disaster home loans, physical disaster business loans, economic injury disaster business loans, and Military Reservist EIDL loans. SBA makes these loans directly or in participation with a financial institution. If a disaster loan authorized under Section 7(b) is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

(b) *IDAP loans.* SBA also offers IDAP loans as authorized by Section 42 of the Small Business Act. SBA makes these interim guaranteed disaster loans to small businesses only in participation with a financial institution. SBA's share in an IDAP loan is equal to 85 percent.

[75 FR 60597, Oct. 1, 2010]

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

There must be reasonable assurance that you can repay your loan based on SBA's analysis of your credit or your personal or business cash flow, and you must also have satisfactory 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.

[61 FR 3304, Jan. 31, 1996, as amended at 79 FR 22862, Apr. 25, 2014]

§ 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 authorized under Section 7(b). You will be responsible for payment of any closing costs owed to third parties on these loans, such as recording fees and title insurance premiums. If your loan is made under Section 7(b) 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. SBA does not charge a guarantee fee for an IDAP loan made under Section 42.

[75 FR 60598, Oct. 1, 2010]

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

(a) For disaster loans authorized under Section 7(b), when SBA approves each 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 the proceeds of a disaster loan authorized under Section 7(b), 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 from a disaster loan authorized under Section 7(b), 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.

(c) If you misapply loan proceeds of any disaster loan under this Part, including an IDAP loan, you may face criminal prosecution or civil or administrative action.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60598, Oct. 1, 2010]

§ 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?

(a) When collateral is not required:

(1) *Economic injury disaster loans.* Generally, SBA will not require that you pledge collateral to secure an economic injury disaster loan of $25,000 or less.

(2) *Physical disaster home and physical disaster business loans.* Generally, SBA will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of $25,000 or less. This authority expires on November 25, 2018, unless extended by statute.

(3) *IDAP loans.* Collateral requirements for IDAP loans are set forth in Subpart H of this part.

(4) *Military Reservist EIDL.* For the purposes of the Military Reservist EIDL only, as described in section 123.513, SBA will not generally require that you pledge collateral to secure a loan of $50,000 or less.

(b) For loans larger than the amounts outlined in paragraph (a) of this section, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal/business property, or both.

(c) 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 the applicable unsecured threshold outlined in paragraph (a)(2) of this section and all economic injury disaster loans to see if they exceed $25,000.

(d) 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.

[61 FR 3304, Jan. 31, 1996, as amended at 73 FR 54675, Sept. 23, 2008; 75 FR 14332, Mar. 25, 2010; 75 FR 60598, Oct. 1, 2010; 79 FR 22862, Apr. 25, 2014; 81 FR 67903, Oct. 3, 2016]

§ 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.

(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 SBA's Disaster Assistance Processing and Disbursement Center (DAPDC) within six months of the date of the decline 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 Director, Disaster Assistance Processing and Disbursement Center. All appeals must be

received by the processing center 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 Director, DAPDC, is final unless:

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

(2) The Director, DAPDC, refers the matter to the AA/DA; or

(3) The AA/DA, upon a showing of special circumstances, requests that the Director, DAPDC, forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations or alleged improper acts by SBA personnel or others in processing the application.

(g) This section does not apply to IDAP loans.

[61 FR 3304, Jan. 31, 1996, as amended at 71 FR 63676, Oct. 31, 2006; 75 FR 60598, Oct. 1, 2010; 81 FR 67903, Oct. 3, 2016]

§ 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 a disaster loan. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans (except IDAP 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, nonappealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60598, Oct. 1, 2010]

§ 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. This provision does not apply to IDAP loans.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60598, Oct. 1, 2010]

§ 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 Subpart H of this part and 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.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60598, Oct. 1, 2010]

§ 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?

(a) Generally, 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.

(b) For all disasters occurring on or after November 25, 2015, you may also request an increase in your loan if you suffered substantial economic damage or substantial risks to health or safety as a result of malfeasance in connection with the repair or replacement of real property or business machinery and equipment for which SBA made a disaster loan. See §123.105 for limits on home loan amounts and §123.202 for limits on business loan amounts. Malfeasance may include, but is not limited to, nonperformance of all or any portion of the work for which a contractor was paid, work that does not meet acceptable standards, or use of substandard materials.

[63 FR 15072, Mar. 30, 1998, as amended at 81 FR 67903, Oct. 3, 2016]

§ 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?

(a) 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.

(b) For physical disaster loan increases requested under §123.18(b) as a result of malfeasance, the request must be received not later than two years after the date of final disbursement.

[63 FR 15073, Mar. 30, 1998, as amended at 81 FR 67903, Oct. 3, 2016]

§ 123.21 What is a mitigation measure?

A mitigation measure is something done for the purpose of protecting property and occupants 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, constructing a safe room or similar storm shelter (if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency), 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.

[67 FR 62337, Oct. 7, 2002, as amended at 81 FR 67903, Oct. 3, 2016; 85 FR 12864, Mar. 5, 2020]

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) 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;

(4) 20 percent of the verified loss (not including refinancing or malfeasance), before deduction of compensation from other sources, up to a maximum of $200,000 for post-disaster mitigation (see § 123.107); and

(5) $200,000 for eligible malfeasance, pursuant to § 123.18.

(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.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 14332, Mar. 25, 2010; 81 FR 67903, Oct. 3, 2016]

§ 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 request that the approved home disaster loan amount be increased by the lesser of the cost of the mitigation measure, or up to 20 percent of the verified loss (before deducting compensation from other sources), to a maximum of $200,000.

[75 FR 14332, Mar. 25, 2010]

§ 123.108 How do the SBA disaster loan program and the FEMA grant programs interact?

After a Presidential disaster declaration is made, you may be eligible for disaster assistance, including grant assistance, from the Federal Emergency Management Agency's (FEMA) Federal Assistance to Individuals and Households Program (IHP). After you register with FEMA for disaster assistance, FEMA will consider you for IHP assistance, which includes housing assistance grants to repair or replace your damaged primary residence and temporary housing assistance (including rental assistance) to assist you temporarily with a place to live, and assistance with personal property, medical, dental and funeral expenses. FEMA may also refer you to SBA to apply for loan assistance to help repair or rebuild your home and/or to replace personal property destroyed during the disaster. If SBA is unable to approve your loan application, or if you have damage in excess of the SBA loan amount, SBA may refer you, on a timely basis, to FEMA for IHP grant consideration to assist with your unmet personal property and transportation needs. If you are approved for the SBA disaster loan and you have received grant assistance that duplicates the damage covered by the SBA loan, such grant assistance must be deducted from your loan eligibility as described in section 123.101(c) of the regulations. All grant decisions are made by FEMA. Additionally, if additional disaster assistance is available from state, local or other agencies, SBA may refer you to the appropriate agency for consideration.

[75 FR 7546, Feb. 22, 2010]

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 $2 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 $2 million limitation. A

major source of employment is a business concern that has one or more locations in the disaster area, on or after the date of the disaster, 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 $2 million loan limit for a major source of employment 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 $2 million is necessary to reopen 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.

(e) The SBA Administrator may increase the $2 million loan limit for disaster business physical and economic injury loans under an individual disaster declaration based on appropriate economic indicators for the region(s) in which the disaster occurred. SBA will publish the increased loan amount in the FEDERAL REGISTER.

[61 FR 3304, Jan. 31, 1996, as amended at 63 FR 46644, Sept. 2, 1998; 75 FR 14332, Mar. 25, 2010]

§ 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, has 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 seven years if you have credit elsewhere.

(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.

(c) For certain disaster business physical and economic injury loans, an additional payment, based on a percentage of net earnings, will be required to reduce the balance of the loan. This additional payment will not be required until 5 years after repayment begins.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 14333, Mar. 25, 2010; 77 FR 12157, Feb. 29, 2012]

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

For mitigation measures implemented after a disaster has occurred, you can request an increase in the approved physical disaster business loan by the lesser of the cost of the mitigation measure, or up to 20 percent of the verified loss, before deducting compensation from other sources, to repair or replace your damaged business.

[75 FR 14333, Mar. 25, 2010]

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) or a private non-profit organization when the declared disaster commenced, 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;

(3) Producer cooperatives; and

(4) Small aquaculture enterprises.

(d) An eligible private non-profit organization is a non-governmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 510(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law.

[61 FR 3304, Jan. 31, 1996, as amended at 67 FR 11880, Mar. 15, 2002; 70 FR 72595, Dec. 6, 2005; 73 FR 41254, July 18, 2008; 75 FR 14333, Mar. 25, 2010; 76 FR 63547, Oct. 12, 2011]

§ 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, other than a private non-profit organization;

(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; 75 FR 14333, Mar. 25, 2010]

§ 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—[Reserved]

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 Under what circumstances is your business eligible to be considered 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 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

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 notice of expected call-up and ending one year after the date the essential employee is discharged or released from active duty. The Associate Administrator for Disaster Assistance (AA/DA) or designee may extend the one year limit by no more then one additional year after finding extraordinary or unforeseeable circumstances.

[73 FR 54675, Sept. 23, 2008]

§ 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. For an essential employee who expects to be called up and who has not received official call-up orders, the application shall include the notice of the expected call-up including, if known, the expected date of call-up and expected 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.

[61 FR 3304, Jan. 31, 1996, as amended at 73 FR 54675, Sept. 23, 2008]

§ 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 $2 million.

[73 FR 54675, Sept. 23, 2008]

§ 123.507 Under what circumstances will SBA consider waiving the $2 million loan limit?

SBA will consider waiving the $2 million 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 is a business concern that, on or after the date of the disaster:

(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 $2 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.

[61 FR 3304, Jan. 31, 1996, as amended at 73 FR 54675, Sept. 23, 2008; 75 FR 14333, Mar. 25, 2010]

§ 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?

Funds will be disbursed only after the essential employee has been called to active duty, and you have provided a copy of the essential employee's official call-up orders for active duty showing the date of the call-up. 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.

[73 FR 54675, Sept. 23, 2008]

§ 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.

§ 123.513 Does SBA require collateral on its Military Reservist EIDL?

SBA will not generally require you to pledge collateral to secure a Military Reservist EIDL of $50,000 or less. For loans larger than $50,000, you will be required to provide available collateral such as a lien on business property, a security interest in personal property, or both. SBA will not decline a loan if you do not have a particular amount of collateral so long as SBA is reasonably sure that you can repay the loan. If you refuse to pledge the available collateral when requested by SBA, however, SBA may decline or cancel your loan.

[73 FR 54675, Sept. 23, 2008]

Subpart G—[Reserved]

Subpart H—Immediate Disaster Assistance Program

SOURCE: 75 FR 60598, Oct. 1, 2010, unless otherwise noted.

§ 123.700 What is the Immediate Disaster Assistance Program?

(a) The Immediate Disaster Assistance Program (IDAP) is a guaranteed disaster loan program for small businesses that have suffered physical damage or economic injury due to a Declared Disaster. An IDAP loan is an interim loan in an amount not to exceed $25,000 made by an IDAP Lender to meet the immediate business needs of an IDAP Borrower while approval of long-term financing from a Disaster Loan is pending with SBA.

(b) *Definitions.* As used in this subpart, the terms below are defined as follows:

Contiguous Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as abutting the Primary Counties.

Credit Elsewhere means that the IDAP Borrower is able to address disaster losses using available personal or business resources or access to nonfederal lending sources at reasonable rates and terms.

Declared Disaster is a disaster event for which an IDAP-Eligible Disaster Declaration has been issued.

Declared Disaster Area means the Primary Counties and the Contiguous Counties identified for a particular Declared Disaster.

Disaster Loan means a disaster loan authorized by Section 7(b) of the Small Business Act.

IDAP Borrower is the obligor of an IDAP loan.

IDAP Lender is a financial institution participating in the IDAP loan program, subject to the requirements of this subpart.

IDAP Loan Program Requirements are requirements imposed upon an IDAP Lender by statute, SBA regulations, any agreement the IDAP Lender has executed with SBA, SBA SOPs, SBA procedural guidance, official SBA notices and forms applicable to the IDAP loan program, and loan authorizations, as such requirements are issued and revised by SBA from time to time.

IDAP-Eligible Disaster Declaration means a Major Disaster Declaration, SBA Administrative Disaster Declaration or SBA EIDL-Only Disaster Declaration in which SBA has indicated that IDAP loans are available.

Initial Period is the IDAP loan repayment period that begins upon the initial disbursement of an IDAP loan and ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed.

Major Disaster Declaration means a disaster declaration issued under § 123.3(a)(1) of this part.

Other Recoveries are other compensation for disaster losses and include, but are not limited to: Proceeds of policies of insurance or other indemnifications; grants or other reimbursement (including loans) from government agencies or private organizations; claims for civil liability against other individuals, organizations or governmental entities; gifts; condemnation awards; and salvage (including any sale or re-use) of items of disaster-damaged property. If an IDAP Borrower has voluntarily paid insurance recoveries to a recorded lienholder, the amount paid is considered to be Other Recoveries.

Primary Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as having been adversely affected by the disaster.

SBA Administrative Disaster Declaration means a disaster declaration issued under § 123.3(a)(3) of this part.

SBA EIDL-Only Disaster Declaration means a disaster declaration issued under § 123.3(a)(5) of this part.

Substantial Economic Injury exists when a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. Loss of anticipated profits or a drop in sales is not considered substantial economic injury.

Term Period is the repayment period that begins following:

(i) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application;

(ii) Receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; or

(iii) Final disbursement of the IDAP loan, whichever is later, and ends when the IDAP loan is repaid in full.

§ 123.701 What is the application procedure for an IDAP loan?

A prospective IDAP Borrower must apply to an IDAP Lender for an IDAP loan by the application deadline for prospective IDAP Borrowers established by SBA in the IDAP-Eligible Disaster Declaration. If the IDAP Lender approves the application, it must submit a request for IDAP loan approval to SBA by the application deadline for IDAP Lenders established by SBA in the IDAP-Eligible Disaster Declaration. SBA will issue an approval or a decline of the IDAP Lender's request within 36 hours of receipt by SBA. A prospective IDAP Borrower will receive notice of approval or decline of its loan application from the

IDAP Lender. Notice of decline will include the reasons. If an IDAP loan is approved, a loan authorization will be issued.

§ 123.702 What are the eligibility requirements for an IDAP loan?

(a) *Eligible IDAP applicants.* To be eligible for an IDAP loan, an applicant business must meet all of the requirements set forth below. The applicant business must:

(1) Be located within a Declared Disaster Area;

(2) Have eligible disaster losses as follows:

(i) For a Major Disaster Declaration, if located in a Primary County, have sustained damage to real or business personal property in the Declared Disaster or, if located in a Primary or Contiguous County, have sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(ii) For an SBA Administrative Disaster Declaration, have sustained damage to real or business personal property in the Declared Disaster or sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(iii) For an SBA EIDL-Only Disaster Declaration, have sustained Substantial Economic Injury as a direct result of the Declared Disaster;

(3) Have been a small business concern under the size requirements applicable to disaster loan assistance under part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(4) Together with affiliates and principal owners, not have Credit Elsewhere;

(5) Apply to SBA for a Disaster Loan within the applicable deadline and before any disbursement of the IDAP loan; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the IDAP loan.

(b) *Ineligible IDAP applicants.* An applicant business is not eligible for an IDAP loan if it is:

(1) A non-profit or charitable concern;

(2) A business that was not a small business concern under the size requirements of part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(3) A consumer or marketing cooperative;

(4) Deriving more than one-third of gross annual revenue from legal gambling activities or a business whose purpose for being is gambling regardless of its ability to meet the one-third criteria established for otherwise eligible concerns;

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

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

(7) Primarily engaged in political or lobbying activities;

(8) A private club or business that limits the number of memberships for reasons other than capacity;

(9) 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;

(10) Engaged in the production or distribution of any product or service that has been determined to be obscene by a court;

(11) Engaged in any illegal activity;

(12) A government owned entity (except for a business owned or controlled by a Native American tribe);

(13) A business in which the IDAP Lender or any of its Associates (as defined in §120.10) owns an equity interest;

(14) Primarily engaged in subdividing real property into lots and developing it for resale on its own account;

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

(16) Delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property;

(17) Located in a Special Flood Hazard Area (SFHA), as designated by the

Federal Emergency Management Agency, and has not maintained required flood insurance on its business property (regardless of the type of disaster);

(18) Located in a SFHA within a nonparticipating community or a community under sanction;

(19) Located in a building that was newly constructed or substantially improved on or after February 9, 1989, and is currently located seaward of mean high tide or entirely in or over water;

(20) Located in a Coastal Barrier Resource Area (COBRA);

(21) A business that had a substantial change of ownership (more than 50 percent) after the Declared Disaster and no contract of sale existed prior to that time;

(22) A business that was established after the Declared Disaster;

(23) Relocating out of the Declared Disaster Area;

(24) Primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries (except for a nursery deriving less than 50 percent of annual receipts from the production and sale of ornamental plants and other nursery products, a small agricultural cooperative or a small producer cooperative); or

(25) A sole proprietorship, unincorporated association, partnership or limited liability company in which a Member of Congress (or a household member) has an ownership interest.

(c) *Character requirements.* An applicant business is not eligible for an IDAP loan if any Associate (as defined in §120.10) of the applicant business:

(1) Is presently under indictment, on parole or probation;

(2) Has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted);

(3) Is at least a 50 percent or more owner of applicant business, and is more than 60 days delinquent on any obligation to pay child support arising under an administrative order, court order, repayment agreement between the holder and a custodial parent, or repayment agreement between the holder and a state agency providing child support enforcement services;

(4) Is an undocumented (illegal) alien; or

(5) Is delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes.

§ 123.703 What are the terms of an IDAP loan?

(a) *Guaranty percentage.* The SBA guaranteed share of an IDAP loan is 85%.

(b) *Maximum loan size.* (1) If the amount of an IDAP Borrower's disaster losses is $25,000 or less, the principal amount of an IDAP loan must not exceed the amount of disaster losses minus Other Recoveries.

(2) If the amount of an IDAP Borrower's disaster losses is more than $25,000, the principal amount of an IDAP loan must not exceed $25,000 minus Other Recoveries.

(c) *Disbursement.* The disbursement period for an IDAP loan is generally up to 30 days from the date of SBA approval of the IDAP loan. If the IDAP Lender is notified before disbursement of the IDAP loan that the IDAP Borrower has received Other Recoveries, the IDAP Lender must decrease the approved amount of the IDAP loan by the amount of the Other Recoveries. If the IDAP Borrower's Disaster Loan is approved, SBA will contact the IDAP Lender when SBA is ready to disburse the Disaster Loan. Upon receipt of such notification by SBA, the IDAP Lender must cancel any remaining undisbursed amount of the IDAP loan.

(d) *Repayment*—(1) *Initial Period.* During the Initial Period, an IDAP Borrower will pay interest only on the disbursed principal balance of the IDAP loan. If SBA approves the IDAP Borrower's Disaster Loan application, SBA will require that the IDAP loan be repaid first from the proceeds of the Disaster Loan. If the IDAP Borrower receives Other Recoveries during the Initial Period, the IDAP Borrower must, in accordance with §123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will

apply the Other Recoveries to the IDAP loan. If the IDAP Borrower's Disaster Loan application is declined or if the amount of the approved Disaster Loan is insufficient to repay the IDAP loan in full, the remaining balance of the IDAP loan will be repaid during the Term Period as described in paragraph (2). The Initial Period ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed. If an IDAP Borrower withdraws an application for a Disaster Loan, fails to close on an approved Disaster Loan or if the approved Disaster Loan is cancelled, the IDAP loan is immediately due and payable by the IDAP Borrower.

(2) *Term Period.* If SBA declines the IDAP Borrower's Disaster Loan application or the approved amount of the Disaster Loan is insufficient to repay the IDAP loan in full, the IDAP Borrower must pay principal and interest on the IDAP loan, with the IDAP loan balance to be fully amortized over a period that is at least 10 years from the date of final disbursement of the IDAP loan, but no more than 25 years from the date of final disbursement. The Term Period begins in the first month following SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application, receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan, or final disbursement of the IDAP loan, whichever is later. Balloon payments are not permitted. The IDAP Borrower may prepay all or a portion of the principal during the life of the loan without penalty. If the IDAP Borrower receives Other Recoveries during the Term Period, the IDAP Borrower must, in accordance with §123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will apply the Other Recoveries to the IDAP loan.

(e) *Interest rate*—(1) *Initial Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Initial Period will be published by SBA in the FEDERAL REGISTER from time to time. This rate must be a fixed rate.

(2) *Term Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Term Period will be published in the FEDERAL REGISTER from time to time. The IDAP Lender may charge either a fixed or a variable rate during the Term Period.

(f) *Number of IDAP loans per small business.* No small business (including affiliates) may obtain more than one IDAP loan per Declared Disaster. The provisions of §120.151 do not apply to IDAP loans.

(g) *Personal guarantees.* Holders of at least a 20 percent ownership interest in the IDAP Borrower must guarantee the IDAP loan.

(h) *Agreement to remit Other Recoveries.* IDAP Borrowers must promptly notify the IDAP Lender of the receipt of Other Recoveries, and must promptly remit the proceeds of Other Recoveries to the IDAP Lender. The IDAP Lender must apply the Other Recoveries to the IDAP loan balance. SBA does not require any additional collateral for IDAP loans.

§ 123.704 Are there restrictions on how IDAP loan funds may be used?

(a) IDAP loan proceeds may only be used for the following purposes:

(1) For a Major Disaster Declaration:

(i) If the IDAP Borrower is located in a Primary County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred; or

(ii) If the IDAP Borrower is located in a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal

operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(2) For an SBA Administrative Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(3) For an SBA EIDL-Only Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(b) IDAP loan proceeds may not be used to:

(1) Refinance or repay indebtedness incurred prior to the Declared Disaster (other than regularly due installments);

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

(5) Make repairs on a building rented by the IDAP Borrower if the IDAP Borrower's lease does not require the IDAP Borrower to make such repairs;

(6) Make repairs to a condominium unit owned by the IDAP Borrower;

(7) Replace landscaping in excess of $5,000 unless the disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business;

(8) Repair or replace property not located within the Declared Disaster Area at the time of the Declared Disaster;

(9) Repay stockholder/Associate loans, except where the funds were injected on an interim basis as a result of the Declared Disaster and non-repayment would cause undue hardship to the stockholder/Associate;

(10) Expand facilities or acquire fixed assets, except for replacement of disaster-damaged fixed assets;

(11) Pay for contractor malfeasance;

(12) Replace damaged property that consists of cash or securities;

(13) Replace damaged property if the replacement value is extraordinarily high and not easily verified, such as the value of antiques, artworks or hobby collections; or

(14) Repair or replace damaged property where the IDAP Borrower's only interest is in the form of a security interest, mortgage or deed of trust.

§ 123.705 Are there any fees associated with IDAP loans?

(a) *IDAP Lender Fees.* An IDAP Lender must not impose any fees or direct costs on an IDAP Borrower, except for the following allowed fees or direct costs:

(1) The reasonable direct costs of liquidation;

(2) A late payment fee not to exceed 5 percent of the scheduled IDAP loan payment; and

(3) An application fee not to exceed $250. Notwithstanding the provisions of 13 CFR 103.5, no compensation agreement is required for the application fee. If an undisbursed IDAP loan is cancelled pursuant to §123.703(c), the IDAP Lender may retain the application fee.

(b) *SBA Fees.* SBA will not impose any guarantee fees on an IDAP Lender making an IDAP loan.

(c) *Prohibition on paid loan packagers, referral agents or brokers.* Other than the

application fee set forth in (a)(3) of this section, no IDAP Lender or third party may charge an IDAP Borrower a fee to assist in the preparation of an IDAP loan application or application materials. No third party may charge an IDAP Borrower or an IDAP Lender a referral fee or broker's fee in connection with an IDAP loan.

§ 123.706 What are the requirements for IDAP Lenders?

(a) *IDAP Lenders.* An IDAP Lender must be a 7(a) Lender (as defined in § 120.10). Notwithstanding the provisions of § 120.470(a), a Small Business Lending Company (SBLC) that is a 7(a) Lender may make IDAP loans. An IDAP Lender must sign a supplemental Loan Guarantee Agreement for the IDAP loan program. An IDAP Lender must comply and maintain familiarity with the IDAP Loan Program Requirements, as such requirements are revised from time to time. IDAP Loan Program Requirements in effect at the time that an IDAP Lender takes an action in connection with a particular IDAP loan govern that specific action. With respect to their activities in the IDAP loan program, IDAP Lenders are subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.400 (Loan Guarantee Agreements), 120.410 (Requirements for all participating Lenders), 120.411 (Preferences), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter. An IDAP Lender and its contractor(s) are independent contractors that are responsible for their own actions with respect to an IDAP loan. SBA has no responsibility or liability for any claim by an IDAP Borrower, guarantor or other party alleging injury as a result of any allegedly wrongful action taken by an IDAP Lender or an employee, agent or contractor of an IDAP Lender.

(b) *Delegated authority.* An IDAP loan must be processed, serviced and liquidated under an IDAP Lender's delegated authority provided by the supplemental Loan Guarantee Agreement for the IDAP loan program. Non-delegated processing is not available for the IDAP loan program. An IDAP Lender is responsible for all IDAP loan decisions regarding eligibility (including size) and creditworthiness. In determining creditworthiness, an IDAP Lender must use the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans of a similar size. The IDAP Lender's existing practices and procedures must be appropriate and generally accepted, proven and prudent credit evaluation processes and procedures, which may include credit scoring, and must ensure that there is reasonable assurance of repayment. In disbursing the IDAP loan, the IDAP Lender must use the same disbursement procedures and documentation as it uses for its similarly sized non-SBA guaranteed commercial loans. An IDAP Lender is also responsible for confirming that all IDAP loan processing, closing, servicing and liquidation decisions are correct and that all IDAP Loan Program Requirements have been followed.

(c) *IDAP Lender reporting.* An IDAP Lender must report on its IDAP loans in accordance with requirements established by SBA from time to time.

(d) *Servicing.* Each IDAP Lender must service all of its IDAP loans in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. SBA's prior written consent is required for servicing actions that may have significant exposure implications for SBA. SBA may require written notice of other servicing actions it considers necessary for portfolio management purposes.

(e) *Liquidations.* Each IDAP Lender must be responsible for liquidating its defaulted IDAP loans. IDAP loans will be liquidated in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with

IDAP Loan Program Requirements. IDAP loans with *de minimis* value may, at the IDAP Lender's request and with SBA's approval, be liquidated by SBA or its agent(s). Significant liquidation actions taken on IDAP loans must be documented. The reimbursement of IDAP Lender liquidation expenses is limited to the amount of the recovery on the IDAP loan.

(f) *Purchase requests.* An IDAP Lender may request SBA to purchase the guaranteed portion of an IDAP loan when there has been an uncured payment default exceeding 60 days or when the IDAP Borrower has declared bankruptcy. IDAP loans are subject to the 7(a) loan program requirements of §§ 120.520 (Purchase of 7(a) loan guarantees), 120.521 (What interest rate applies after SBA purchases its guaranteed portion?), 120.522 (Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion), 120.523 (What is the ''earliest uncured payment default''?), 120.524 (When is SBA released from liability on its guarantee?), 120.542 (Payment by SBA of legal fees and other expenses) and 120.546 (Loan asset sales) of this chapter.

(g) *Prohibition on secondary market sales, securitizations, loan participations and loan sales.* An IDAP Lender may not sell the guaranteed portion of an IDAP loan in the secondary market, securitize the unguaranteed portion of an IDAP loan, participate any portion of an IDAP loan with another lender, or sell all of its interest in an IDAP loan.

(h) *Loan pledges.* An IDAP Lender may pledge an IDAP loan subject to the 7(a) loan program requirements of §§ 120.434 and 120.435 of this chapter.

(i) *Oversight.* All IDAP Lenders are subject to the supervision and enforcement provisions applicable to 7(a) Lenders in part 120, subpart I of this chapter (§§ 120.1000 through 120.1600). In addition, an IDAP Lender that is an SBA Supervised Lender (as defined in § 120.10) is subject to the requirements of §§ 120.460 through 120.490, as applicable.

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

Subpart A—8(a) Business Development

PROVISIONS OF GENERAL APPLICABILITY

Sec.

124.1 What is the purpose of the 8(a) Business Development program?
124.2 What length of time may a business participate in the 8(a) BD program?
124.3 What definitions are important in the 8(a) BD program?
124.4 What restrictions apply to fees for applicant and Participant representatives?

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

124.101 What are the basic requirements a concern must meet for the 8(a) BD program?
124.102 What size business is eligible to participate in the 8(a) BD program?
124.103 Who is socially disadvantaged?
124.104 Who is economically disadvantaged?
124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?
124.106 When do disadvantaged individuals control an applicant or Participant?
124.107 What is potential for success?
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 and remaining eligible for the 8(a) BD program?
124.110 Do Native Hawaiian Organizations (NHOs) have any special rules for applying to and remaining eligible for the 8(a) BD program?
124.111 Do Community Development Corporations (CDCs) have any special rules for applying to and remaining eligible for 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 How 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?