

Chapter 9

Small Business Administration (SBA) Disaster Loans

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Loans are available when an employee who is essential to the success of a small business is called up to serve in a military conflict.²

B. Eligible Federally Declared Disasters

SBA disaster loans are generally only available in areas where an official federal disaster declaration is in effect.³ Military Reservist Economic Injury Disaster Loans are available regardless of the existence of a natural disaster.⁴

There are two general categories of disasters for which SBA disaster assistance is available.

1. Sudden Events Causing Severe Physical Damage

SBA physical disaster loans and economic injury loans are available after sudden events that cause severe physical damage. These include natural disasters such as floods, hurricanes, and tornadoes.⁵

2. Events Causing Economic But Not Physical Damage

SBA economic injury loans may be available after physical events such as drought or late freezing temperatures that cause substantial economic injury but no physical damage to property.⁶

C. How to Apply for SBA Disaster Loan Assistance

Once a federal disaster declaration is issued, SBA will publish a notice in the Federal Register to describe the kinds of assistance available, the date and type of disaster, and the deadline and location for filing applications for assistance.⁷ This information is generally publicized widely throughout disaster counties.⁸

Before submitting an application for SBA disaster home loan assistance, homeowners or renters must register with the Federal Emergency Management Agency (FEMA) to obtain a FEMA Registration ID Number.⁹ Applicants may register with FEMA by calling 1-800-621-FEMA (1-800-621-3362). The hearing or speech impaired may call (TTY) 1-800-462-7585.

Applications for business disaster loans and economic injury loans may be submitted directly to SBA.¹⁰ Most forms and instructions for these loans are available on the Internet from SBA's disaster recovery web page: www.sbaonline.sba.gov/disaster_recov/loaninfo/dloanassit.html. Completed business disaster loan applications may be submitted to the SBA Disaster Area office serving the area. Contact information for these offices is also found on the

SBA disaster recovery web page. SBA's help line is 1-800-UASK-SBA (1-800-827-5722).

II. General SBA Disaster Loan Provisions

The general provisions that apply to all three SBA disaster loan programs are explained in this section. The specific rules for each of the three programs are explained in the following sections. General rules for reconsideration of denials of loan applications and loan servicing are explained at the end of this chapter.

A. Eligibility Requirements

1. Repayment Ability

The applicant must show reasonable assurance that he or she will be able to repay the loan out of personal or business income.¹¹ SBA will not make a loan if repayment depends upon the sale of any of the applicant's assets.¹²

2. Satisfactory Credit and Character

The applicant must have "satisfactory credit and character."¹³ This phrase is not defined in the program regulations.¹⁴

3. Federal Judgment Lien Debtors Generally Ineligible for SBA Disaster Loans

Applicants who own property subject to an outstanding judgment lien for a debt owed to the federal government are generally ineligible for SBA disaster loans.¹⁵ A judgment lien is a lien created when a creditor goes to court to enforce a debt and the court issues a judgment against the debtor.

a. Restriction on Judgment Lien Debtors Waived for Good Cause

The SBA Associate Administrator for Disaster Assistance may waive the restriction against judgment lien debtors for "good cause."¹⁶ To get a good cause exception, the applicant must submit a letter written under oath that convinces SBA that the applicant's particular circumstances justify a waiver. Circumstances that could justify a "good cause" exception include the following.

(1) Disaster Played a Major Role in Delinquency

SBA may grant a waiver if the declared disaster was a major factor contributing to the delinquency that led to the judgment lien.¹⁷ This is true regardless of when the original debt was incurred.

(2) Disaster Directly Prevented Applicant From Satisfying Judgment Lien

SBA may grant a waiver if the applicant had already entered an agreement to satisfy a predisaster judgment lien held by a federal agency, and the disaster directly prevented the applicant from fulfilling that agreement.¹⁸ The creditor agency must certify that the applicant was in compliance with the agreement when the disaster occurred.

(3) Other Circumstances Justifying Waiver

The applicant may present to SBA any other circumstances that would justify a waiver of the restriction against loans to federal judgment lien debtors.¹⁹

b. Waiver Determination Not Appealable But Applicant May Request Reconsideration

The regulations state that the determination whether to grant a waiver of the judgment lien debtor restriction is a final, nonappealable decision.²⁰ An applicant may still request reconsideration of a waiver denial.²¹ Reconsideration procedures are discussed in Part VII of this chapter.

c. Waiver Recipient Must Satisfy All Other SBA Disaster Loan Requirements

Grant of a waiver does not ensure that the applicant will get an SBA disaster loan. All other loan application procedures must be followed.²²

B. Ineligible Types of Property and Damage

An applicant will not be granted SBA disaster assistance in the following cases.

1. Applicant Acquires Interest in Damaged Property After the Disaster

If the applicant voluntarily acquired more than 50 percent ownership interest in the property after the disaster occurred, the applicant would not be eligible for SBA disaster loans.²³ The only exception is where a contract for sale existed at the time of the disaster.

2. Applicant Assumed the Risk of Loss

If SBA determines that the applicant assumed the risk of loss—for example, by not maintaining flood insurance when required to do so by a previous loan—no SBA loans will be available for that loss.²⁴

3. Applicant Has Only a Security Interest in the Damaged Property

If the applicant's interest in the property is limited to a mortgage, deed of trust, or other security interest, the applicant will not be eligible for SBA disaster loans.²⁵

4. Applicant Voluntarily Relocates

If an applicant voluntarily relocates outside the business area in which the disaster occurred and there are no special or unusual circumstances behind the decision to relocate, SBA disaster loans will not be available.²⁶ "Business area" means the municipality, county, or equivalent political entity providing general governmental services to the applicant's damaged home or business.²⁷

a. Exceptions: Circumstances Allowing Relocation of Home

An applicant may be able to use SBA disaster loans to relocate his or her home if the relocation is made necessary by special circumstances such as the following.²⁸

(1) Risk of Future Disasters

If the applicant faces a demonstrable risk of future disasters in the business area where his or her primary residence is located, SBA disaster loan proceeds may be available for relocation.

(2) Change in Employment

If the applicant experiences a change in employment status—for example, job loss, transfer, lack of job opportunities, or planned retirement—within 18 months after the disaster, SBA loan proceeds may be available for relocation of the applicant's home.

(3) Medical Justification

If the applicant is required to relocate for medical reasons, SBA disaster loan proceeds may be available for this purpose.

(4) Family Considerations Force Relocation

If the applicant experiences family events that necessitate a move outside of the area, SBA disaster loan proceeds may be available for relocation.

(5) Local Authorities Prohibit Repair of Damaged Property

If the applicant is forced to relocate within or outside of the business area because local authorities prohibit repair of the damaged property, SBA considers this a total loss. Any loan received will be an amount that SBA considers sufficient to replace the residence at a new location, plus damage to personal property and eligible refinancing.²⁹

b. Exceptions: Circumstances Allowing Business Relocation

An applicant may be able to use SBA disaster loans to relocate a physically damaged business if there are uncontrollable or compelling circumstances that undermine the economic viability of the business.³⁰ The regulations give the following examples.³¹

(1) Disaster Has Eliminated or Substantially Decreased Market

If the business has experienced the elimination of or substantial decrease in the market for its products due to the disaster, SBA disaster loan proceeds may be available for relocation.

(2) Change in Business Demographics Make Continuation Uneconomical

If, as a result of the disaster (or within 18 months prior to it), a change in business demographics makes it uneconomical to continue the business in the area, SBA disaster loan proceeds may be available for relocation.

(3) Change in Business Costs Make Continuation Uneconomical

If, as a result of the disaster, a substantial change in business costs makes continuation of the damaged business in the area uneconomical, SBA disaster loan proceeds may be available for relocation.

(4) Hazard-Prone Location

If the business is located in a hazard-prone area, such as a special flood hazard area, SBA disaster loan proceeds may be available to relocate the business.

(5) Changes in Public Infrastructure Substantially Increase Expenses

If changes in the public infrastructure of the business area resulting from the disaster (or within 18 months of it) would substantially increase expenses for a damaged business, SBA disaster loan proceeds may be available for relocation.

(6) Implementation of Existing Business Plan

If, within 18 months prior to the disaster, the damaged business had adopted and at least partially implemented plans to move outside the business area, SBA loan proceeds may be available to relocate the business.

5. Specifically Excluded Property

SBA disaster loans are not available to repair or replace the following types of property.

a. Agricultural Enterprises

Agricultural enterprises, including farms and ranches, are generally not eligible for SBA disaster loans.³² Farmers are eligible for disaster home loans for damage to their residence and its contents, even if it is located on the farm property.³³ Small agricultural cooperatives may be eligible for Economic Injury Disaster Loans.³⁴

b. Recreational Vehicles

Vehicles normally used for recreational purposes are generally not eligible for SBA disaster loans.³⁵ Such vehicles may be repaired or replaced with SBA physical disaster business loan proceeds if the applicant can show that the damaged vehicles were used in the business at the time of the disaster.³⁶

c. Cash or Securities

Loss of or damage to cash or securities due to natural disaster is not an eligible basis for an SBA disaster loan.³⁷

d. Secondary Homes

An applicant may not receive SBA disaster home loans to repair or replace any dwelling other than his or her primary home.³⁸ But the owner of a rental home damaged by disaster may be eligible for a physical disaster business loan to repair or replace the property.

e. Unique, Hard-to-Value Items

SBA disaster loans are not available to repair or replace items of extraordinarily high, not easily verifiable value, such as artwork, antiques, or hobby collections.³⁹

f. Property on Tideland or In or Over Water

SBA disaster loans are not available to repair or replace any building or its contents lying seaward of mean high tide or entirely in or over water

if that building was newly constructed or substantially improved after February 8, 1989.⁴⁰ Exceptions may be made where a significant business justification exists for the location.

C. Compensation From Other Sources Generally Reduces SBA Disaster Assistance

SBA loans will not be available to the extent that the damaged property can be repaired or replaced with the proceeds of insurance, gifts, or other compensation, including condemnation awards.⁴¹ But applicants should apply for SBA loans as soon as possible, even if they do not know how much of their loss will be covered by insurance or other proceeds. SBA will consider making a loan for the full amount of the loss, provided that the applicant assigns the insurance proceeds to SBA to reduce the amount of the loan.⁴²

1. Deduct From Claimed Loss If Received Before Loan Disbursement

Compensation for damaged property must be declared to SBA. The loss that is eligible for SBA disaster loans will be reduced in proportion to any compensation received.⁴³

2. Pay to SBA If Received After Loan Disbursement

Borrowers are required to report any loss compensation collected after SBA loan disbursement.⁴⁴ Any such compensation received after SBA has disbursed a disaster loan must be turned over to SBA as a principal payment on the loan.⁴⁵

3. Insurance Proceeds

If proceeds from insurance are available to cover the repair or replacement of damaged property, the eligible SBA disaster loan amount will be reduced by the amount of the proceeds.⁴⁶

a. Insurance Proceeds Voluntarily Paid to Lienholder

If the applicant voluntarily pays insurance proceeds to recorded lienholders instead of using the proceeds to make repairs, the applicant's loan eligibility will be reduced by the amount of the voluntary payment.⁴⁷

b. Insurance Proceeds Paid to Lienholder Under Contractual Obligation

If the applicant is required to pay insurance proceeds to a party holding a recorded lien or encumbrance on the damaged property instead of using them to make repairs, the applicant's eligible loan amount will not be reduced.⁴⁸

4. Exception: FEMA Grant Used While SBA Application Pending

Any compensation received by the applicant under the Federal Emergency Management Agency's (FEMA) Individuals and Households Program (IHP) while waiting for an SBA application to be processed is exempt from the loss reduction calculation.⁴⁹ But if the IHP grant money was used for purposes that could also be funded by an SBA loan, the borrower must use the SBA loan proceeds to repay the FEMA grant.⁵⁰ See Chapter 2 of this book for more information on FEMA disaster assistance programs.

D. Eligible Uses for Loan Proceeds

Proceeds from SBA disaster loans may be used for the following purposes.

1. Property Repair and Replacement

A borrower may repair or replace his or her primary home, household effects, and personal and business property to pre-disaster condition.⁵¹

2. Mandatory Improvements

A borrower may upgrade his or her residence or business property to meet minimum standards of safety and decency or current building code requirements.⁵²

3. Protective Measures

A borrower may use SBA disaster loan proceeds to protect damaged property from future similar disasters.⁵³

4. Refinancing Debt on Damaged Property

It is possible to use SBA disaster loan proceeds to refinance debt on damaged personal or business property.⁵⁴ There are a number of

requirements that must be satisfied for borrowers to use their loan proceeds for this purpose.⁵⁵

a. Recorded Liens and Encumbrances on Business or Primary Residence

SBA disaster loan proceeds may be used to refinance only recorded liens and encumbrances on a primary residence or business property.⁵⁶

b. Borrower Not Able to Obtain Credit Elsewhere

Federal statute requires that only borrowers who cannot obtain credit elsewhere may use SBA disaster loan proceeds to refinance debt on damaged property.⁵⁷ SBA looks at the borrower's cash flow and disposable assets to make an assessment as to whether the borrower could obtain financing from nonfederal sources on reasonable terms and conditions, taking into consideration the prevailing rates and terms in the community for similar purposes and periods of time.⁵⁸

c. Property Must Have Been Totally Destroyed or Substantially Damaged

SBA disaster loans may only be used to refinance debt on property if the property was totally destroyed or substantially damaged in the disaster. SBA considers property to be "totally destroyed or substantially damaged" if it meets one of the following criteria.⁵⁹

(1) Damage Equals Lesser of 40 Percent of Market Value or 40 Percent of Replacement Cost—Including Land

If the value of damaged property, including land, has declined by at least 40 percent of market value or 40 percent of replacement cost, whichever is less, SBA disaster loans may be used to refinance debt on that property. Only uninsured or otherwise uncompensated damage resulting from the disaster is included in this calculation.

(2) Damage Equals Lesser of 50 Percent of Market Value or 50 Percent of Replacement Cost—Excluding Land

If the value of damaged property, excluding land, has declined by at least 50 percent of market value or 50 percent of replacement

cost, whichever is less, SBA disaster loans may be used to refinance debt on that property. Only uninsured or otherwise uncompensated damage resulting from the disaster is included in this calculation.

5. Repayment of Disaster-Caused Debt on Personal Property

A borrower may use SBA disaster loan proceeds to repay debts incurred on personal property as a direct result of the disaster.⁶⁰

6. Disaster Mitigation Measures

Up to 20 percent of the amount of an approved physical disaster loan may be used to implement mitigation measures.⁶¹ Mitigation measures include building retaining walls, grading and contouring land, elevating flood-prone structures, and relocating utilities.⁶²

E. Security Requirements

A borrower will be generally be required to provide collateral as security for an SBA disaster loan.

1. Loans for Which No Security Is Required

SBA does not require collateral for smaller disaster loans.⁶³ Some borrowers may receive more than one loan for a single disaster. In that case, SBA will total all physical disaster loans or all economic injury loans to determine whether collateral is required.⁶⁴

a. Physical Damage Loan Not Exceeding \$10,000

SBA does not require borrowers to pledge any property as security for a physical disaster loan of \$10,000 or less.⁶⁵

b. Economic Injury Disaster Loan Not Exceeding \$5,000

SBA does not require borrowers to pledge any property as security for an economic injury loan of \$5,000 or less.⁶⁶

2. Larger Loans Generally Require Security

Physical disaster loans of more than \$10,000 and economic injury loans of more than \$5,000 will require a pledge of available collateral. This may

include a lien on the damaged or replacement property, a security interest in personal property, or both.⁶⁷

3. Insufficient Security Not Necessarily Cause for Loan Denial

So long as there is reasonable assurance of repayment, SBA will generally not decline a loan solely because the applicant does not have a sufficient amount of collateral available to pledge.⁶⁸

4. Refusal to Pledge Available Security May Be Basis for Denial

A refusal to pledge available collateral, when required, may be a basis for denial of an SBA disaster loan.⁶⁹

F. Loan Repayment Terms

The regulations set out general rules for repayment of SBA disaster loans.

1. Thirty-Year Maximum Loan Term in General

The maximum maturity for SBA disaster loans is 30 years, including any extensions.⁷⁰

2. Loan Terms Based on Borrower's Needs and Ability to Repay

The length of the loan and the repayment terms will be established for each loan based on the borrower's needs and ability to pay.⁷¹

3. Monthly Installments Generally Required

In most cases, SBA will require equal monthly installment payments of principal and interest beginning five months from the date of the loan.⁷²

a. Exception: Borrowers With Seasonal or Fluctuating Income

Farmers and other borrowers who have seasonal or fluctuating income may be able to negotiate other payment terms.⁷³

b. Exception: Varying Installments for First Two Years If Suits Borrower's Ability to Pay

SBA may also agree to installment payments of varying amounts in the first two years of repayment if that arrangement better reflects the borrower's ability to pay.⁷⁴

4. Interest Rates on SBA Disaster Loans

The interest rates on SBA disaster loans are set by statute.⁷⁵

a. Physical Disaster Loans: Can the Borrower Obtain Credit Elsewhere?

The interest rate on an SBA physical disaster loan will depend on whether SBA determines that the borrower can obtain credit elsewhere.⁷⁶ To assess whether the borrower could obtain financing from nonfederal sources on reasonable terms SBA looks at (1) the borrower's cash flow and disposable assets, and (2) the prevailing rates and terms in the local community for similar purposes and time periods.⁷⁷

(1) Borrowers Who Cannot Get Credit Elsewhere

The interest rate for physical disaster loans made to borrowers who cannot get credit elsewhere is half the Adjusted Treasury Rate, up to a cap of 4 percent per year.⁷⁸

(2) Borrowers Who Can Get Credit Elsewhere

The interest rate for physical disaster loans to borrowers who can get credit elsewhere is the Adjusted Treasury Rate, up to a cap of 8 percent per year.⁷⁹

b. Economic Injury Disaster Loans

Borrowers are only eligible for economic injury loans if there is no other credit available.⁸⁰ Therefore there is only one interest rate for these loans: half of the Adjusted Treasury Rate, up to a cap of 4 percent per year.⁸¹ By statute, this rate also applies to Military Reservist Economic Injury Disaster Loans.⁸²

5. No Prepayment Penalty

There is no penalty for prepayment of SBA disaster loans.⁸³

G. Recordkeeping, Inspection, and Appraisal Requirements

The regulations set out requirements for retaining records related to any SBA disaster loan.

1. All Borrowers Must Retain Records for Three Years From Start of Loan

Complete records of all transactions financed with SBA disaster loan proceeds—including contracts and receipts—must be retained by all borrowers for three years after the final disbursement of loan proceeds is received.⁸⁴

2. Business Borrowers Must Retain Accurate Account Books for Three Years From End of Loan

Business borrowers receiving economic injury or physical disaster loans must retain current and accurate books of account—including financial and operating statements, insurance policies, and tax returns—for three years after the loan matures or is paid in full, whichever is sooner.⁸⁵

3. Records Must Be Made Available to SBA Upon Request

Upon request of SBA or other authorized government personnel, all books of account and records must be made available for inspection, audit, and reproduction.⁸⁶

4. SBA Authorized to Inspect and Appraise Borrower's Assets

Borrowers must permit SBA and any participating financial institution to inspect and appraise their assets.⁸⁷

H. Misuse of Loan Proceeds

When SBA approves a disaster loan application, it issues a loan authorization that specifies the permitted uses of the loan proceeds. Borrowers who misuse SBA disaster loan proceeds may face collection, penalties, and other charges.

1. Unapproved Use of Proceeds Contrary to Loan Authorization

Any willful use of loan proceeds contrary to the loan authorization without prior approval from SBA is considered misuse of the loan.⁸⁸

2. Failure to Use Proceeds Within 60 Days of Disbursement

Failure to use SBA disaster loan proceeds within 60 days of receiving a disbursement check is also considered misuse.⁸⁹

3. Liable to Repay 150 Percent of Benefits Received

Misuse of SBA disaster loan proceeds can make borrowers liable for repayment of one and one-half times the value of disaster benefits received.⁹⁰ Borrowers who misuse loan proceeds may also face criminal, civil, and administrative action.⁹¹

4. Notification and Appeal of Misuse Determination

The regulations set out a notice and appeal process for cases of misuse.

a. Notification by Certified Mail

If SBA believes that a borrower has misused disaster loan proceeds, the borrower will be notified by certified mail of that determination.⁹²

b. Thirty Days to Submit Evidence of No Misuse

The borrower will be given at least 30 days to submit evidence that there was no misuse or that any misuse was corrected.⁹³

c. Failure to Respond Is Admission of Misuse

Failure to respond to the notification of misuse will be considered an admission of misuse.⁹⁴

d. SBA May Commence Collection If Borrower's Response Is Rejected

If SBA reviews the evidence submitted by the borrower and concludes that there has been a misuse of loan proceeds, SBA will cancel any undisbursed proceeds, call the loan, and begin collection measures.⁹⁵

I. Compliance With Other Federal Statutory Requirements

SBA disaster loan borrowers are required to comply with federal requirements regarding flood insurance, lead-based paint, flood plain and wetlands management, earthquake hazards, coastal barrier islands, nondiscrimination, and child support obligations.⁹⁶

III. Physical Disaster Home Loans

This section describes the specific eligibility requirements and loan availability provisions for SBA physical disaster home loans.

A. Restore or Replace Home and Personal Property Damaged by Disaster

SBA physical disaster loans can be used to restore or replace a residence and personal property physically damaged or destroyed by a disaster.

1. Property Damage Caused by the Disaster

Only property damage that was caused by the disaster is eligible for assistance.⁹⁷

2. Applicant Must Be the Owner of the Damaged Property

Losses may only be claimed by the person who owned the property at the time of the disaster.⁹⁸ SBA will consider beneficial ownership as well as legal title to determine who suffered the loss.⁹⁹

3. Eligible Property Types

Physical disaster home loans are available for damage to or loss of a farmer's home and household and personal effects.¹⁰⁰

a. Eligible Property for Homeowners

Homeowners may apply for loans to repair or replace their primary residence and personal property.¹⁰¹

b. Eligible Property for Tenants and Other Non-Owner Residents

An applicant who does not own his or her residence is eligible for a loan to cover damage to personal property.¹⁰² Personal property loans are available to all occupants sharing a residence who are not dependents of the owner. This includes family members.

B. Limitations on the Amount of Loans

The home and personal property loan limits for verified, uncompensated loss in any single disaster are as follows.

1. Personal Property Repair and Replacement Limited to \$40,000

The maximum loan amount for repair or replacement of household and personal effects is \$40,000.¹⁰³

2. Repair and Replacement of Primary Residence Limited to \$200,000

The maximum loan amount for repair or replacement of a primary residence is \$200,000.¹⁰⁴ This includes upgrading and improvements to meet safety and decency standards and current building code requirements. A maximum of \$5,000 of this amount may be used for repair or replacement of landscaping or recreational facilities.

3. Eligible Refinancing Limited to \$200,000

The maximum loan amount for eligible refinancing of debt on damaged property is \$200,000.¹⁰⁵ The amount of such refinancing may not exceed the value of physical damage, reduced by insurance or any other compensation.¹⁰⁶ The regulations do not specify how the physical damage will be valued.

4. Up to 20 Percent of Loan for Preventive Measures

Twenty percent of the total loan amount, up to a maximum of \$48,000, may be used to pay for measures to prevent future similar disasters from causing more damage to the property.¹⁰⁷

C. Requests for Loan Increases After Approval

A borrower may submit a request for an increase in a physical disaster loan award after approval of the original application if circumstances beyond the borrower's control result in an increase in eligible costs of repair or replacement.¹⁰⁸ The regulations give two examples of such circumstances: (1) the discovery of hidden damage within a reasonable time after the original loan approval and before completion of the repair or reconstruction; or (2) a change in applicable building code requirements after approval of the original loan.

Requests for additional funds are to be made "as soon as possible" but no later than two years after approval of the original loan.¹⁰⁹ The SBA Associate Administrator for Disaster Assistance may waive the two-year limit for "extraordinary and unforeseeable" circumstances.

IV. Physical Disaster Business Loans

This section describes the specific eligibility requirements and loan availability provisions for SBA physical disaster business loans.

A. Repair, Rehabilitate, or Replace Nonfarm Business Property

SBA physical disaster business loans can be used to repair, rehabilitate, or replace nonfarm business property that was physically damaged or destroyed by a disaster in a declared disaster area.¹¹⁰

1. Eligibility of Agricultural Enterprises

As discussed earlier, agricultural enterprises are generally not eligible for SBA physical disaster business loans.¹¹¹

a. “Agricultural Enterprise” Defined

For SBA disaster program purposes, an agricultural enterprise is a business “engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.”¹¹²

b. No SBA Disaster Loans for Loss of Farm Income or Damage to Farm Assets

This exclusion prohibits SBA from making disaster loans to cover farm losses such as damage to farm buildings, crops, livestock, or equipment. Farmers needing disaster assistance for these types of losses should contact USDA’s Farm Service Agency (FSA). See Chapter 7 of this book for information about FSA Emergency loans.

c. Businesses Only Partly Agricultural May Be Eligible for SBA Assistance

In 1998, SBA changed its regulations to make it clear that physical disaster business loan benefits are available for physical losses to nonagricultural business ventures that are part of a larger agricultural enterprise.¹¹³ SBA assistance is limited, however, to benefiting the nonagricultural aspects of the business that suffered physical damage in a disaster.

SBA gives the example of a business enterprise that includes both a ranch and a retail store. If disaster strikes, the retail store would be eligible for SBA assistance for any damage to physical property, but the ranch would not be eligible.¹¹⁴ The amount of SBA disaster benefits would be determined by the value of damage to the store.

d. Where No Duplication With FSA Disaster Programs, Farmers Arguably Eligible for SBA Disaster Loans

Farmers may be involved in businesses that cross the line from agricultural enterprise into marketing, processing, or some other industry. To the extent that a farmer's work is in these areas, SBA physical disaster business loans may be available. The statute that prohibits SBA from making disaster loans to agricultural enterprises does so in the name of avoiding duplication of efforts with other federal agencies, primarily USDA.¹¹⁵ Agricultural enterprises that are not eligible for FSA Emergency loans or other USDA disaster programs should arguably be eligible for SBA business disaster loans.¹¹⁶

Farmers who have business interests that may be eligible for SBA physical disaster business loans should contact the nearest SBA Disaster Area Office for further information about eligibility.

2. Eligible Businesses

In general, any private business or nonprofit entity that suffers damage to physical property due to a disaster is eligible to apply for a physical disaster business loan.¹¹⁷ Eligibility for SBA physical disaster business loans is not affected by the business size, and any legal entity recognized under state law—for example, a sole proprietorship, corporation, partnership, or limited liability company—can be eligible.¹¹⁸

3. Eligible Damage

Only disaster-related damage to the applicant's property is eligible for SBA disaster business loans.

a. Property Owned by Applicant in Declared Disaster Area

The damaged property must have been owned by the loan applicant within a disaster area at the time of the disaster.¹¹⁹

b. Leased Property Where Tenant Responsible for Repair or Replacement

Leased business property may be eligible for SBA physical disaster loan assistance if the tenant is responsible under the lease for repair or replacement of damaged property.¹²⁰

c. Damage to Property Caused by Disaster

Only property damage that was caused by the disaster is eligible for assistance.¹²¹

B. Limitations on the Amount of Loans

Physical disaster business loan limits for any one disaster are as follows.

1. Total Benefits for Single Disaster Capped at \$1.5 Million

The maximum amount of loans that a business and its affiliates may receive for any one disaster is the value of verified, uncompensated loss up to \$1.5 million.¹²² This cap includes both physical disaster loans and economic injury loans.

2. Limit May Be Waived for Major Employers

SBA may waive the \$1.5 million limit for any business that is a “major source of employment” in its area.¹²³ To receive a waiver of the loan limit, the business must also be out of business or in imminent danger of going out of business due to the disaster, and it must have used all available funds and other credit to alleviate the situation.¹²⁴

3. Landscaping and Recreational Facility Expenses Capped at \$5,000

Loan proceeds used for repair or replacement of landscaping (including recreational facilities) cannot exceed \$5,000.¹²⁵ This limit may be waived if the landscaping fulfilled a functional need or contributed to the generation of business.

C. Three-Year Maximum Loan Term for Businesses Able to Obtain Credit Elsewhere

Business borrowers who are able to obtain credit elsewhere will have a maximum disaster loan term of three years.¹²⁶ SBA will consider borrowers to be unable to get credit elsewhere if they could not get a loan on reasonable terms from nonfederal sources, taking into consideration the borrower's income and disposable assets, as well as the prevailing rates and terms in the local community for similar purposes and time periods.¹²⁷ In determining credit availability for a business borrower, SBA will also consider the ability of its principal owners and affiliates to obtain credit elsewhere.¹²⁸

D. Requests for Loan Increases After Approval

A borrower may submit a request for an increase in a physical disaster loan award after approval of the original application if circumstances beyond the borrower's control result in an increase in eligible costs of repair or replacement.¹²⁹ The regulations give two examples of such circumstances: (1) the discovery of hidden damage within a reasonable time after the original loan approval and before completion of the repair or reconstruction; and (2) a change in applicable building code requirements after approval of the original loan.

Requests for additional funds are to be made "as soon as possible" but no later than two years after approval of the original loan.¹³⁰ The SBA Associate Administrator for Disaster Assistance may waive the two-year limit for "extraordinary and unforeseeable" circumstances.

V. Economic Injury Disaster Loans

This section describes the specific eligibility requirements and loan availability provisions for SBA economic injury loans.

A. Provide Working Capital Until Normal Business Conditions Resume

SBA economic injury disaster loans are available to help a business in a declared disaster area with economic injury caused by the disaster.¹³¹

1. Eligibility of Agricultural Enterprises

Agricultural enterprises are generally not eligible for SBA economic injury loans.¹³²

a. “Agricultural Enterprise” Defined

For SBA disaster program purposes, an agricultural enterprise is a business “engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.”¹³³

b. Small Agricultural Cooperatives Are Eligible for Economic Injury Loans

Small agricultural cooperatives, producer cooperatives, and nurseries are specifically named by the regulations and authorizing statute as businesses eligible for economic injury loans.¹³⁴ The Small Business Act defines a “small agricultural cooperative” as an association acting pursuant to the Agricultural Marketing Act, which qualifies as a small business under SBA size standards.¹³⁵

c. Where No Duplication With FSA Disaster Programs, Farmers Arguably Eligible for SBA Disaster Loans

Farmers may be involved in businesses that cross the line from agricultural enterprise into marketing, processing, or some other industry. To the extent that a farmer’s work is in these areas, SBA economic injury loans may be available. The statute that prohibits SBA from making disaster loans to agricultural enterprises does so in the name of avoiding duplication of efforts with other federal agencies, primarily USDA.¹³⁶ Agricultural enterprises that are not eligible for FSA Emergency loans or other USDA disaster programs should arguably be eligible for SBA business disaster loans.¹³⁷

Farmers who believe they may have business interests that would be eligible for SBA economic injury loans should contact the nearest SBA Disaster Area Office for further information about eligibility.

2. Substantial Economic Injury

To be eligible for an SBA economic injury loan, the business must have suffered substantial economic injury as a direct result of a declared disaster.¹³⁸ A “substantial economic injury” means a change in the financial condition of the business that leaves the business unable to pay its debts as they mature or to pay its ordinary and necessary operating expenses.¹³⁹

3. Small Business Status When Disaster Commenced

To be eligible for an SBA economic injury loan, the business must have been a small business according to SBA regulations at the time of the disaster.¹⁴⁰

4. Business, Affiliates, and Owners Have Used All Available Funds

The business, its affiliates, and principal owners—those having 20 percent or more ownership interest—must have used all available funds to alleviate the economic distress of the business.¹⁴¹

5. Unable to Obtain Credit Elsewhere

Only businesses that are unable to obtain credit elsewhere are eligible for economic injury loans.¹⁴² SBA looks at the business’s cash flow and disposable assets and makes an assessment as to whether the business could obtain financing from nonfederal sources on reasonable terms.¹⁴³

6. Special Exclusions for Economic Injury Disaster Loans

Certain types of businesses are not eligible for economic injury loans.¹⁴⁴ These include consumer and marketing cooperatives.¹⁴⁵ As mentioned above, however, small producer cooperatives and agricultural cooperatives are explicitly eligible.¹⁴⁶

7. Eligible Uses of Economic Injury Disaster Loan Proceeds

Economic injury loans provide working capital to carry the business until normal operating conditions resume.¹⁴⁷ Borrowers may also use the funds for expenditures necessary to alleviate specific economic injury, but not to exceed what the business could have provided had there been no disaster.

8. Prohibited Uses of Economic Injury Disaster Loan Proceeds

The regulations set out specific uses that are prohibited for economic injury loan proceeds.

a. Refinancing Debt Incurred Prior to the Disaster

Economic injury loan proceeds may not be used to refinance debt taken on prior to the disaster.¹⁴⁸

b. Payment on Federal Loan Obligations

Economic injury loan proceeds may not be used to make payments on loans owed to any federal agency or a federally licensed small business investment company.¹⁴⁹

c. Payment on Federal, State, or Local Penalty Obligations

Economic injury loan proceeds may not be used, directly or indirectly, to pay federal, state, or local penalty obligations.¹⁵⁰ These include tax penalties resulting from negligence or fraud, as well as fines and penalties for noncompliance with regulations, law, or court or administrative orders.

d. Repair of Physical Damage

Economic injury loans are for economic harm only. They may not be used for repair of physical damage to property.¹⁵¹

e. Dividends or Disbursements to Stockholders, Owners, or Officers

Economic injury loan proceeds may not be paid to owners, partners, officers, or stockholders except as reasonable compensation for services performed directly for the business.¹⁵²

B. Requests for Loan Increases After Approval

A borrower may submit a request for an increase in an economic injury loan award after approval of the original application, if circumstances related to the original disaster and beyond the borrower's control create a need for additional funds that are essential for the business to continue.¹⁵³ The regulations give the

example of delays that prevent resumption of normal business activity in a reasonable time frame.

Requests for additional funds are to be made “as soon as possible” but no later than two years after approval of the original loan.¹⁵⁴ The SBA Associate Administrator for Disaster Assistance may waive the two-year limit for “extraordinary and unforeseeable” circumstances.

VI. Military Reservist Economic Injury Disaster Loans

A small business is eligible to receive an SBA economic injury loan if the business suffers losses or is likely to suffer losses when an essential employee is ordered to active military duty.¹⁵⁵

The loan can be used to meet debt obligations as they mature; pay operating expenses; or market, produce, or provide products and services normally provided by the reservist employee.¹⁵⁶

A. Eligible Businesses

The regulations set out specific eligibility requirements for SBA Military Reservist Economic Injury Disaster Loans.

1. Called Up on or After March 24, 1999

The essential employee must have been called up to active duty during a military conflict existing on or after March 24, 1999.¹⁵⁷

2. Business Faces Substantial Economic Injury

The business must face substantial economic injury because of the reservist's absence.¹⁵⁸

3. All Available Funds Have Been Exhausted

The owner, affiliates, and principal owners of the business—those having 20% or more ownership interest—must have used all available funds to meet the business's needs.¹⁵⁹

4. Credit Not Available Elsewhere

The business and its affiliates and owners must be unable to obtain credit from another source.¹⁶⁰

5. Eligibility of Agricultural Enterprises

Agricultural enterprises are not eligible for Military Reservist Economic Injury Disaster Loans.¹⁶¹ Unlike the regulations for the general economic injury loans, the regulations for the Military Reservist Economic Injury Disaster Loans do not specifically make small agricultural cooperatives eligible for the loans.

B. Application Deadline

A small business can apply for a Military Reservist Economic Injury Disaster Loan beginning the date the employee receives official call-up orders.¹⁶² The application deadline is 90 days after the date the employee is discharged or released from active duty.¹⁶³

If the owner is an essential employee and is called up for active duty before applying for a loan, a person with a power of attorney may submit the loan application.¹⁶⁴

C. Limitation on Loan Amount and Waiver Requirements

A small business can obtain a Military Reservist Economic Injury Disaster Loan in an amount equal to the economic losses suffered until normal operations resume. The maximum loan amount is \$1.5 million.¹⁶⁵

SBA may waive the \$1.5 million limit if the business is a major source of employment or the business is in imminent danger of going out of business as a result of the essential employee being called up for active duty.¹⁶⁶ The business must have used all available funds and credit.¹⁶⁷

VII. Reconsideration of Loan Denial

If an applicant is denied a loan by SBA, he or she may request that SBA reconsider its decision.

A. Notification of Denial

The regulations set out requirements for notification of a disaster loan denial.

1. Written Notification

SBA must notify an applicant in writing that his or her application for disaster loan assistance has been denied.¹⁶⁸

2. Specific Reasons for Denial Given

The notification must give the specific reasons for the denial.¹⁶⁹

3. Opportunity to Present Information in Support of Application

If the applicant was denied for any reason other than the size of the business, the notification must give the applicant the opportunity to present information that shows why the decision to deny the loan request was wrong and to request reconsideration.¹⁷⁰

B. How to Apply for Reconsideration

The regulations set out specific requirements for requesting reconsideration, including a time limit.

1. Written Request for Reconsideration

A request for reconsideration of an SBA disaster loan application must be in writing.¹⁷¹

2. Within Six Months of Date of Denial

SBA must receive the reconsideration request within six months of the date of the application denial.¹⁷² After six months, a new loan application is required.

3. Submitted to SBA Office That Denied the Application

The reconsideration request must be submitted to the SBA office that denied the original application.¹⁷³

4. Include All New Information Used to Support Loan Application

The written request must include all the new information that the applicant relies on to support his or her argument that the denial was wrong.¹⁷⁴

5. Business Loan Applicants Must Include Current Financial Information

If SBA denied a business loan, the request for reconsideration must also include current business financial statements.¹⁷⁵

C. Further Reconsideration

If the reconsideration is unsuccessful, further review is possible. The regulations set out detailed requirements for obtaining further review.

1. Appeal to SBA Area Director

If, upon reconsideration, SBA denies the application again, the applicant may appeal that decision to the SBA Area Director.¹⁷⁶

2. Written Appeal Within 30 Days of Second Denial

Appeals to the Area Director must be in writing and must be submitted to the office that denied the first reconsideration.¹⁷⁷ That office that must receive the appeal within 30 days of the second denial.¹⁷⁸

3. “This Is An Appeal”

The letter that the applicant submits as an appeal must state that it is an appeal.¹⁷⁹

4. Specific Reasons in Support of Application

The letter of appeal must give specific reasons why the loan denial should be reversed.¹⁸⁰

5. Decision of Area Director Generally Final

The decision of the Area Director will be final in most cases.¹⁸¹ Special circumstances may allow further review within SBA. Those circumstances include policy considerations, alleged improper acts by SBA personnel or others in processing the loan application, and conflicting policy interpretation between two SBA area offices.¹⁸² After a final denial by the Area Director—or by the SBA Central Office in cases where the Area Director’s decision is not final—an applicant may challenge in court SBA’s denial of his or her disaster loan application.

VIII. SBA Loan Servicing

Some farmers affected by a current disaster may have received loans from SBA in earlier years. Because of the financial drain a disaster has caused, it may not be possible to make the scheduled payments on those SBA loans. SBA does have authority to offer and approve loan servicing that can change a borrower's repayment obligations.¹⁸³ But the regulations provide only very general guidance as to when and how SBA will use this authority.

Loans made by private lenders and backed by an SBA guarantee will be serviced by the private lenders.¹⁸⁴

A. Unable to Pay for Reasons Substantially Beyond the Borrower's Control

Borrowers who are unable to pay installments on SBA loans in a timely manner for reasons substantially beyond their control may request that SBA suspend the loan payments, extend the loan repayment period, or both.¹⁸⁵

B. Extension of Payment Period

SBA may extend a loan for up to ten years beyond its original maturity date if the extension will "aid in the orderly repayment of the loan."¹⁸⁶ But no SBA disaster loan may be extended beyond 30 years.¹⁸⁷ SBA regulations no longer include specific loan extension provisions.¹⁸⁸ Borrowers interested in learning more about loan extensions should contact their local SBA office for current requirements.

C. Deferment of Payments

SBA may agree to suspend a borrower's obligation to make payments for a specified period of time.¹⁸⁹ This is called a deferment. SBA regulations do not include detailed criteria for deferments. Borrowers interested in learning more about loan deferments should contact their local SBA office for current requirements.

D. Moratorium on Payments

SBA may agree to assume a borrower's obligations under a guaranteed loan for a specific period.¹⁹⁰ SBA makes the principal and interest payments during that period. This is called a moratorium.

The Small Business Administrator has the discretion to decide whether to use SBA's loan moratorium authority.¹⁹¹ The latest SBA regulations omit the detailed specifications for this loan servicing program, and the national SBA office has indicated that it does not intend to offer moratorium as a loan servicing option at this time. Borrowers interested in learning more about the loan moratorium program should contact their local SBA office for current requirements.

E. Delinquency on an SBA Loan May Bring Administrative Offset of Federal Payments

One reason it is important for farmers to act quickly to resolve delinquencies on SBA loans is the fact that any federal payments a delinquent farmer is entitled to receive may be subject to administrative offset until the delinquency is resolved.¹⁹²

IX. Homestead Protection for Farm Loans Made by SBA

Some farmers may have outstanding SBA loans from the time when SBA was not prohibited from making or guaranteeing farm loans. If disaster or other circumstances cause a farmer to lose homestead property securing such a loan, statutory protections may allow the farmer to recover the homestead.

A. Homestead Protection Available When SBA Takes Collateral

If a borrower defaults on a farm loan made or guaranteed by SBA, and SBA acquires the farm property, SBA must comply with the homestead protection provisions established under the Food Security Act of 1985, as amended.¹⁹³

The statute and regulations provide that, where state homestead protection or redemption laws conflict with the SBA provisions, the state laws will prevail.¹⁹⁴

1. "Homestead Property" Defined

Homestead property includes the farm residence and up to ten acres and seven farm buildings.¹⁹⁵

2. Three- to Five-Year Lease of Homestead Property

Under the homestead protection provisions, borrowers may lease homestead property for three to five years after SBA forecloses or takes the property

into inventory.¹⁹⁶ A lease that was originally for less than five years may be extended up to the five-year maximum.

3. Right of First Refusal

At any time during the lease or at the end of the lease period, the borrower has a right of first refusal to repurchase the property under terms and conditions as good as would be offered to any other purchaser.¹⁹⁷ In no case may the required payment exceed the current market value of the property, as determined by an independent appraisal.¹⁹⁸

B. Time Limits for Exercising Homestead Protection Rights

There is some inconsistency in the statute and regulations concerning the time limits for exercising homestead protection rights. Borrowers are encouraged to act as quickly as possible.

1. SBA Must Notify Borrower of Homestead Protection Program

Both SBA and FSA must notify the borrower of homestead protection rights. The governing statute and regulations provide different time limits for this notification by SBA and FSA. SBA regulations require notification to the borrower of homestead protection rights within 30 days after SBA acquires the property.¹⁹⁹ The statute requires that FSA notify borrowers of their homestead protection rights no later than the date FSA acquires property pledged on a farm loan.²⁰⁰

2. Borrower Must Apply for Homestead Occupancy at SBA Field Office

The borrower must apply for homestead occupancy at the SBA field office that serviced the loan.²⁰¹ The regulations and governing statute provide different time limits for the application.

a. Statute Requires Application Within 30 Days of SBA Acquisition

The 1996 FAIR Act requires SBA borrowers to apply for homestead occupancy no later than 30 days after the date SBA acquires property pledged on a farm loan.²⁰²

b. Regulations Require Application Within 90 Days of SBA Acquisition

SBA regulations in effect when this book went to print in October 2004 do not reflect the 1996 FAIR Act changes. Instead, they follow the previous statutory provision, which required a borrower to apply for homestead occupancy within 90 days of SBA acquiring the property.²⁰³

3. Borrowers Should Follow Stricter Time Limits But Argue for Looser If Necessary

It is not clear which schedule SBA will use when processing homestead occupancy applications. Because of the different standards, borrowers should be sure to submit their applications within the 30-day time limit set by the statute. If circumstances prevent a borrower from submitting an application for homestead protection within 30 days of SBA taking the property, the borrower could still try to submit an application within the 90-day period provided for in the regulations. There is no guarantee, however, that applications submitted after 30 days will be accepted. If SBA does not provide immediate notification, this should strengthen the borrower's argument that he or she should have 90 days to submit an application.

C. Eligibility for Homestead Protection

Eligibility requirements for homestead protection are set out in federal statute and SBA regulations.

1. Reasonable Farm Income

To be eligible for homestead protection, the borrower must provide evidence that the farm produces farm income reasonable for the area and the economic conditions.²⁰⁴ SBA will generally rely on FSA, the state agricultural extension service, or evidence from local, independent agricultural experts to make this determination.²⁰⁵

2. Farm Provided 60 Percent of Gross Income in Two of Past Six Years

The borrower must show that at least 60 percent of the borrower's and his or her spouse's gross annual income came from farm or ranch operations in at least two of the last six calendar years.²⁰⁶

3. Borrower Resided on Property for Past Six Years

The borrower must have resided on the property during the previous six years.²⁰⁷ This requirement may be waived if circumstances beyond the borrower's control necessitated leaving the property for 12 months or less during the six-year period.²⁰⁸

4. Borrower Personally Liable for the Debt

To be eligible for homestead protection, the borrower must be personally liable for the debt to SBA.²⁰⁹

D. Requirements of Homestead Protection Program Participants

A borrower whose homestead protection application is approved will be required to maintain the property and pay reasonable rent during the lease term.

1. Maintain Personal Possession of Homestead Property

A borrower who is approved for homestead protection must maintain personal possession of the property for the term of the lease.²¹⁰ The property must be kept in good condition.²¹¹

2. Pay Reasonable Rent

The borrower must pay reasonable rent for the homestead property.²¹² "Reasonable rent" is an amount substantially equivalent to rents charged for similar residential properties in the area.²¹³

E. Appeal of Homestead Protection Denial

Denial of a homestead protection application may be appealed.

1. Appeal to SBA Assistant Administrator for Financial Assistance Programs

Denial of an application for homestead protection may be appealed to the SBA Assistant Administrator for Financial Assistance Programs.²¹⁴ The regulations do not provide a procedure for this appeal.

2. Borrower May Retain Possession Until Conclusion of Appeal

The borrower may retain possession of the homestead property until the conclusion of any appeal.²¹⁵

X. Discrimination Is Illegal

SBA is prohibited by the Equal Credit Opportunity Act (ECOA) from discriminating against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided he or she has the capacity to enter into a contract), the applicant's receipt of income from any public assistance program, or the applicant's exercise, in good faith, of any right under the Consumer Protection Act, which includes the ECOA.²¹⁶

Chapter 9 Notes

- ¹ 13 C.F.R. § 123.5 (2004). SBA can make loans directly or guarantee loans made by other lenders. This chapter focuses primarily on direct SBA loans.
- ² 15 U.S.C. § 636(b)(3); 13 C.F.R. pt. 123, subpt. F (2004).
- ³ 13 C.F.R. § 123.4 (2004). No declaration is needed to be eligible for a Military Reservist Economic Injury Disaster loan. 15 U.S.C. § 636(b)(3)(F). Disaster declarations may be made by the President or by SBA. 13 C.F.R. § 123.3(a) (2004). When the President declares a disaster, SBA economic injury loans are available in counties bordering the disaster area. When SBA issues a disaster declaration, it includes bordering counties for both physical disaster and economic injury loans. 13 C.F.R. § 123.4 (2004).
- ⁴ 15 U.S.C. § 636(b)(3)(F).
- ⁵ 15 U.S.C. § 632(k); 13 C.F.R. § 123.2 (2004). These types of events also include industrial accidents, riots, and civil disorder.
- ⁶ 13 C.F.R. § 123.2 (2004). These types of events also include changing ocean conditions and contamination of food products from unforeseeable and unintended events beyond the victim's control.
- ⁷ 13 C.F.R. § 123.3(b) (2004). SBA may accept applications filed after the deadline if it determines that the applicant filed late due to "substantial causes" beyond the applicant's control.
- ⁸ 13 C.F.R. § 123.3(b) (2004).
- ⁹ See the SBA's Disaster Recovery web page at http://www.sbaonline.sba.gov/disaster_recov/loaninfo/dloanassit.html <last visited September 28, 2004>.
- ¹⁰ See the SBA's Disaster Recovery web page at http://www.sbaonline.sba.gov/disaster_recov/loaninfo/dloanassit.html <last visited September 28, 2004>.
- ¹¹ 13 C.F.R. § 123.6 (2004).
- ¹² 13 C.F.R. § 123.6 (2004).
- ¹³ 13 C.F.R. § 123.6 (2004).
- ¹⁴ Regarding character, the regulations do provide some guidance. The following are ineligible for SBA disaster loans: (1) individuals convicted during the past year of a felony during and in connection with a riot or other disaster; (2) principal owners of property damaged or destroyed during a disaster who are presently incarcerated, on probation, or on parole following

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conviction for a serious criminal offense; and (3) businesses engaged in any illegal activity or activities of a “prurient sexual nature.” 13 C.F.R. §§ 123.101(a) and (i), 123.201(d) and (f), 123.301 (2004). Federal law also prohibits SBA from making disaster loans to any person engaged in the production or distribution of any product or service that has been determined by a court to be obscene. 15 U.S.C. § 633(e); 13 C.F.R. § 123.6 (2004).

15 28 U.S.C. § 3201(e); 13 C.F.R. § 123.14(a) (2004).

16 28 U.S.C. § 3201(e); 13 C.F.R. § 123.14(a) (2004).

17 13 C.F.R. § 123.14(a)(1) (2004).

18 13 C.F.R. § 123.14(a)(2) (2004).

19 13 C.F.R. § 123.14(a)(3) (2004).

20 13 C.F.R. § 123.14(b) (2004).

21 See the prefatory comments to the final rule adopting the waiver authority. 60 Fed. Reg. 22,495 (1995). The rule as published referred to provisions for requesting reconsideration at 13 C.F.R. § 123.12 (1995). In 1996, SBA reorganized its regulations, and the reconsideration provisions were moved, without substantive change, to 13 C.F.R. § 123.13.

22 13 C.F.R. § 123.14(b) (2004).

23 13 C.F.R. §§ 123.101(b), 123.201(a), 123.301 (2004).

24 13 C.F.R. §§ 123.101(d), 123.201(a), 123.301 (2004).

25 13 C.F.R. §§ 123.101(j), 123.201(a), 123.301 (2004).

26 13 C.F.R. §§ 123.101(l), 123.201(c), 123.301 (2004).

27 13 C.F.R. § 123.101(l) (2004).

28 13 C.F.R. § 123.102 (2004).

29 13 C.F.R. § 123.103 (2004).

30 13 C.F.R. § 123.201(c) (2004).

31 13 C.F.R. § 123.201(c) (2004).

32 15 U.S.C. § 636(b).

33 See www.sba.gov/disaster_recov/loaninfo/property.html <last visited September 28, 2004>.

34 15 U.S.C. § 636(b)(2); 13 C.F.R. § 123.300(c) (2004).

35 13 C.F.R. §§ 123.101(f), 123.201(a), 123.301 (2004).

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- 36 13 C.F.R. § 123.200(b) (2004).
- 37 13 C.F.R. §§ 123.101(g), 123.201(a), 123.301 (2004).
- 38 13 C.F.R. §§ 123.101(e), 123.201(a), 123.301 (2004).
- 39 13 C.F.R. §§ 123.101(h), 123.201(a), 123.301 (2004).
- 40 13 C.F.R. §§ 123.101(k), 123.201(a), 123.301 (2004).
- 41 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 42 See www.sba.gov/disaster_recov/loaninfo/property.html <last visited September 28, 2004>.
- 43 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 44 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 45 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 46 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 47 13 C.F.R. § 123.10 (2004).
- 48 13 C.F.R. § 123.10 (2004).
- 49 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 50 13 C.F.R. §§ 123.101(c), 123.201(a), 123.301 (2004).
- 51 13 C.F.R. § 123.7 (2004).
- 52 13 C.F.R. §§ 123.105(a)(2), 123.202(a) (2004).
- 53 13 C.F.R. §§ 123.7, 123.105(a)(4), 123.107 (2004).
- 54 13 C.F.R. §§ 123.105(a)(3), 123.202(c) (2004).
- 55 Additional requirements are set out in the statute: (1) the property that is security for the refinanced debt must be repaired, rehabilitated, or replaced; (2) the refinanced amount may not exceed the amount of physical loss sustained; and (3) the refinanced amount will be reduced by the amount of the mortgage or lien that is satisfied by insurance or other compensation. 15 U.S.C. § 636(b)(1)(B)(ii)-(iv).
- 56 15 U.S.C. § 636(b)(1)(B); 13 C.F.R. §§ 123.106(a), 123.202(c) (2004).
- 57 15 U.S.C. § 636(b)(1)(B)(i); 13 C.F.R. §§ 123.104, 123.106(a) (2004).
- 58 15 U.S.C. § 632(h); 13 C.F.R. § 123.104 (2004).
- 59 13 C.F.R. §§ 123.106(a), 123.202(c) (2004).
- 60 13 C.F.R. § 123.105(b) (2004).
- 61 13 C.F.R. §§ 123.107, 123.204 (2004).

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- 62 13 C.F.R. § 123.21 (2004).
63 13 C.F.R. § 123.11 (2004).
64 13 C.F.R. § 123.11(a) (2004).
65 13 C.F.R. § 123.11 (2004).
66 13 C.F.R. § 123.11 (2004).
67 13 C.F.R. § 123.11 (2004).
68 13 C.F.R. § 123.11(b) (2004).
69 13 C.F.R. § 123.11(b) (2004).
70 15 U.S.C. § 636(b); 13 C.F.R. §§ 123.105(c), 123.203(a) (2004).
71 13 C.F.R. §§ 123.105(c), 123.203(a) (2004).
72 13 C.F.R. §§ 123.105(c), 123.203(b) (2004).
73 13 C.F.R. §§ 123.105(c), 123.203(b) (2004).
74 13 C.F.R. §§ 123.105(c), 123.203(b) (2004).
75 15 U.S.C. § 636(c)(5).
76 15 U.S.C. § 636(c)(5); 13 C.F.R. §§ 123.104, 123.203(a) (2004).
77 15 U.S.C. § 632(h). See 13 C.F.R. § 123.104 (2004) for SBA’s regulatory
definition of “credit elsewhere.”
78 15 U.S.C. § 636 (c)(5)(A), (C); 13 C.F.R. §§ 123.104, 123.203(a) (2004).
79 15 U.S.C. § 636 (c)(5)(B), (D); 13 C.F.R. §§ 123.104, 123.203(a) (2004).
80 15 U.S.C. § 636(b)(2).
81 15 U.S.C. § 636 (c)(5)(C); 13 C.F.R. § 123.302 (2004).
82 15 U.S.C. § 636(b)(3)(D).
83 13 C.F.R. §§ 123.105(c), 123.203(b) (2004).
84 13 C.F.R. § 123.12 (2004).
85 13 C.F.R. § 123.12 (2004).
86 13 C.F.R. § 123.12 (2004).
87 13 C.F.R. § 123.12 (2004).
88 13 C.F.R. § 123.9(a) (2004).
89 13 C.F.R. § 123.9(a) (2004).
90 13 C.F.R. § 123.9(a) (2004).
91 13 C.F.R. § 123.9(b) (2004).

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- ⁹² 13 C.F.R. § 123.9(b) (2004).
- ⁹³ 13 C.F.R. § 123.9(b) (2004).
- ⁹⁴ 13 C.F.R. § 123.9(b) (2004).
- ⁹⁵ 13 C.F.R. § 123.9(b) (2004).
- ⁹⁶ 13 C.F.R. § 123.17 (2004). See generally 13 C.F.R. §§ 120.170 to 120.176 (2004).
- ⁹⁷ 15 U.S.C. § 636(b); 13 C.F.R. § 123.2 (2004).
- ⁹⁸ 13 C.F.R. § 123.100(b) (2004).
- ⁹⁹ 13 C.F.R. § 123.100(b) (2004). A beneficial interest in property may be created by a trust.
- ¹⁰⁰ 13 C.F.R. §§ 123.100, 123.105(a) (2004).
- ¹⁰¹ 13 C.F.R. § 123.100(a)(1) (2004).
- ¹⁰² 13 C.F.R. § 123.100(a)(2) (2004).
- ¹⁰³ 13 C.F.R. § 123.105(a)(1) (2004).
- ¹⁰⁴ 13 C.F.R. § 123.105(a)(2) (2004).
- ¹⁰⁵ 13 C.F.R. § 123.105(a)(3) (2004).
- ¹⁰⁶ 13 C.F.R. § 123.106(b) (2004).
- ¹⁰⁷ 13 C.F.R. §§ 123.105(a)(4), 123.107 (2004).
- ¹⁰⁸ 13 C.F.R. § 123.18 (2004).
- ¹⁰⁹ 13 C.F.R. § 123.20 (2004).
- ¹¹⁰ 15 U.S.C. § 636(b); 13 C.F.R. § 123.200 (2004).
- ¹¹¹ 13 C.F.R. § 123.201(a) (2004).
- ¹¹² 15 U.S.C. § 647(b)(1); 13 C.F.R. § 123.201(a) (2004).
- ¹¹³ 13 C.F.R. § 123.201(b) (2004). Earlier regulations allowed SBA to make physical disaster business loans to businesses that mixed agricultural and nonagricultural ventures if agriculture was not the primary business. See 13 C.F.R. § 123.201(b) (1997). Under the current regulations, the “agriculture is not primary” requirement was removed. Nonagricultural businesses that are part of a larger agricultural enterprise may be eligible for SBA physical disaster business loans.
- ¹¹⁴ 63 Fed. Reg. 46, 644 (1998) (prefatory comments to final rule).
- ¹¹⁵ 15 U.S.C. § 647(a). See S. Rep. No. 146, 99th Cong., 2nd Sess. 527-28, reprinted in 1986 U.S.C.C.A.N. 42, 486-87. See also 7 C.F.R. § 1945.26 (2004).

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- ¹¹⁶ Note that FSA Emergency loans are not available for “nonfarm enterprises,” which are defined as, “[a]ny nonfarm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.” 7 C.F.R. § 764.2, “Nonfarm enterprise” (2004).
- ¹¹⁷ 13 C.F.R. § 123.200(a) (2004). Businesses that are not eligible for SBA physical disaster business loans include government-owned entities (except those owned or controlled by a Native American tribe), businesses engaged in any illegal activity, and businesses receiving revenue from products, services, displays, or performances of a prurient sexual nature. 13 C.F.R. § 123.201(d)-(f) (2004).
- ¹¹⁸ 13 C.F.R. § 123.200(a) (2004).
- ¹¹⁹ 13 C.F.R. § 123.200(a) (2004).
- ¹²⁰ 13 C.F.R. § 123.200(a) (2004).
- ¹²¹ 13 C.F.R. §§ 123.2, 123.200 (2004).
- ¹²² 13 C.F.R. § 123.202(a) (2004).
- ¹²³ 13 C.F.R. § 123.202(a) (2004). A business that is a major source of employment is defined as one that (1) employed 10 percent or more of the entire workforce in the community, (2) employed 5 percent of the workforce in an industry within the disaster area and had at least 50 nonmanufacturing employees or 150 manufacturing employees, or (3) employed at least 250 people within the disaster area.
- ¹²⁴ 13 C.F.R. § 123.202(b) (2004).
- ¹²⁵ 13 C.F.R. § 123.202(d) (2004).
- ¹²⁶ 15 U.S.C. § 636(c)(5)(D); 13 C.F.R. § 123.203(a) (2004).
- ¹²⁷ 15 U.S.C. § 632(h). See 13 C.F.R. § 123.104 (2004) for SBA’s regulatory definition of “credit elsewhere.”
- ¹²⁸ 13 C.F.R. § 123.203(a) (2004).
- ¹²⁹ 13 C.F.R. § 123.18 (2004).
- ¹³⁰ 13 C.F.R. § 123.20 (2004).
- ¹³¹ 13 C.F.R. § 123.300(a) (2004).

- ¹³² 13 C.F.R. § 123.300(c) (2004).
- ¹³³ 15 U.S.C. § 647(b)(1); 13 C.F.R. § 123.201(a) (2004).
- ¹³⁴ 15 U.S.C. § 636(b)(2); 13 C.F.R. § 123.300(c)(1)-(3) (2004).
- ¹³⁵ 15 U.S.C. § 632(j). These standards are found at 13 C.F.R. pt. 121, "Small Business Size Regulations" (2004). For agricultural processing enterprises, for example, the maximum size is generally from 500 to 1,000 employees. 13 C.F.R. § 121.201 (2004). The Agricultural Marketing Act may be found at 12 U.S.C. §§ 1141 *et seq.*
- ¹³⁶ 15 U.S.C. § 647(a). See S. Rep. No. 146, 99th Cong., 2nd Sess. 527-28, reprinted in 1986 U.S.C.C.A.N. 42, 486-87.
- ¹³⁷ Note that FSA Emergency loans are not available for "nonfarm enterprises," which are defined as, "[a]ny nonfarm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables." 7 C.F.R. § 764.2, "Nonfarm enterprise" (2004).
- ¹³⁸ 13 C.F.R. § 123.300(a) (2004).
- ¹³⁹ 13 C.F.R. § 123.300(a) (2004).
- ¹⁴⁰ 13 C.F.R. § 123.300(b) (2004). See 15 U.S.C. § 632(a)(1) and 13 C.F.R. § 121.201 (2004) for SBA size standards.
- ¹⁴¹ 13 C.F.R. § 123.300(b) (2004).
- ¹⁴² 13 C.F.R. § 123.300(b) (2004).
- ¹⁴³ 15 U.S.C. § 632(h); 13 C.F.R. §§ 123.104, 123.300(b) (2004).
- ¹⁴⁴ 13 C.F.R. § 123.301 (2004). Businesses specifically excluded from eligibility for economic injury loans include: (1) businesses engaged in lending, multi-level sales distribution, speculation, or investment (except for rental properties held when the disaster occurred); (2) nonprofit and charitable organizations; (3) businesses earning more than one-third of gross annual revenue from legal gambling; (4) loan packagers earning more than one-third of gross annual revenue from packaging SBA loans; (5) businesses principally engaged in religious education, counseling, or indoctrination; and (6)

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businesses primarily engaged in political or lobbying activities. See also 13 C.F.R. §§ 123.101, 123.201 (2004).

¹⁴⁵ 13 C.F.R. § 123.301(c) (2004).

¹⁴⁶ 15 U.S.C. § 636(b)(2); 13 C.F.R. § 123.300(c)(2) (2004). The Small Business Act defines a “small agricultural cooperative” as an association acting pursuant to the Agricultural Marketing Act (12 U.S.C. §§ 1141 *et seq.*) which meets SBA size standards. 15 U.S.C. § 632(j). See 15 U.S.C. § 632(a)(1) and 13 C.F.R. § 121.201 (2004) for SBA size standards.

¹⁴⁷ 13 C.F.R. § 123.303(a) (2004).

¹⁴⁸ 13 C.F.R. § 123.303(b)(1) (2004).

¹⁴⁹ 13 C.F.R. § 123.303(b)(2) (2004).

¹⁵⁰ 13 C.F.R. § 123.303(b)(3) (2004).

¹⁵¹ 13 C.F.R. § 123.303(b)(4) (2004).

¹⁵² 13 C.F.R. § 123.303(b)(5) (2004).

¹⁵³ 13 C.F.R. § 123.19 (2004).

¹⁵⁴ 13 C.F.R. § 123.20 (2004).

¹⁵⁵ 15 U.S.C. § 636(b)(3); 13 C.F.R. § 123.501 (2004).

¹⁵⁶ 13 C.F.R. § 123.508 (2004).

¹⁵⁷ 13 C.F.R. § 123.501(c) (2004).

¹⁵⁸ 13 C.F.R. § 123.501(d) (2004).

¹⁵⁹ 13 C.F.R. § 123.501(e) (2004).

¹⁶⁰ 13 C.F.R. § 123.501(e) (2004). See 13 C.F.R. § 123.104 (2004) for SBA’s regulatory definition of “credit elsewhere.”

¹⁶¹ 13 C.F.R. § 123.502(d) (2004). This regulation revives a distinction based on whether agricultural production is the “primary activity” of a business. SBA had previously seemed to be moving away from this distinction.

¹⁶² 15 U.S.C. § 636(b)(3)(C); 13 C.F.R. § 123.503 (2004).

¹⁶³ 15 U.S.C. § 636(b)(3)(C); 13 C.F.R. § 123.503 (2004).

¹⁶⁴ 13 C.F.R. § 123.505 (2004).

¹⁶⁵ 15 U.S.C. § 636(b)(3)(E); 13 C.F.R. § 123.506 (2004).

¹⁶⁶ 13 C.F.R. § 123.507 (2004).

¹⁶⁷ 13 C.F.R. § 123.507 (2004).

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- 168 13 C.F.R. § 123.13(a) (2004).
- 169 13 C.F.R. § 123.13(a) (2004).
- 170 13 C.F.R. § 123.13(a) (2004). Appeals of denials due to size must follow the procedure set out in 13 C.F.R. pt. 121 (2004). 13 C.F.R. § 123.13(b) (2004).
- 171 13 C.F.R. § 123.13(a) (2004).
- 172 13 C.F.R. § 123.13(c) (2004).
- 173 13 C.F.R. § 123.13(c) (2004).
- 174 13 C.F.R. § 123.13(d) (2004).
- 175 13 C.F.R. § 123.13(d) (2004).
- 176 13 C.F.R. § 123.13(e) (2004).
- 177 13 C.F.R. § 123.13(e) (2004).
- 178 13 C.F.R. § 123.13(e) (2004).
- 179 13 C.F.R. § 123.13(e) (2004).
- 180 13 C.F.R. § 123.13(e) (2004).
- 181 13 C.F.R. § 123.13(f) (2004). The Area Director's decision to deny a loan is not final if: (1) the Area Director does not have the authority to approve the loan; (2) the Area Director refers the matter to the Associate Administrator for Disaster Assistance; or (3) the Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to the Central Office for the final decision.
- 182 13 C.F.R. § 123.13(f)(3) (2004).
- 183 15 U.S.C. § 636(b), (c).
- 184 13 C.F.R. § 123.16(a) (2004).
- 185 13 C.F.R. § 123.16(b) (2004).
- 186 15 U.S.C. § 636(c)(1); 13 C.F.R. § 120.531 (2004).
- 187 15 U.S.C. § 636(b); 13 C.F.R. §§ 123.105(c), 123.203(a) (2004).
- 188 The specifications for SBA disaster loan extensions given at 13 C.F.R. § 123.13(b) (1995) were dropped when SBA reorganized its regulations in 1996. No mention of this omission is made in the prefatory comments to the new regulations. 61 Fed. Reg. 3304 (1996).
- 189 13 C.F.R. § 120.530 (2004).

¹⁹⁰ 13 C.F.R. § 120.532 (2004).

¹⁹¹ 15 U.S.C. § 636(b).

¹⁹² 31 U.S.C. § 3716; 13 C.F.R. § 140.2 (2004).

¹⁹³ 7 U.S.C. § 2000. This statute provides that both SBA and USDA's Farm Service Agency (FSA) (formerly the Farmers Home Administration) shall provide homestead protection to farmers whose homestead property is foreclosed on or otherwise taken into possession by one of these agencies. While local SBA officials may not be very familiar with the Homestead Protection Program, FSA has been actively administering such a program since 1987. FSA regulations interpret the statute more generously to the farmer-borrower than do SBA regulations. FSA regulations give the farmer an "option to purchase" the homestead property on favorable terms, while SBA regulations give the farmer only a "right of first refusal" on terms as good as any other purchaser would receive. 7 C.F.R. § 1951.911(b)(2)(iv) (2004); 13 C.F.R. § 120.552 (2004). Farmers who need to use SBA's Homestead Protection Program might consider urging high-level SBA officials to adopt FSA's regulatory interpretation of the program.

¹⁹⁴ 7 U.S.C. § 2000(g); 13 C.F.R. § 120.554 (2004).

¹⁹⁵ 7 U.S.C. § 2000(a)(4); 13 C.F.R. §§ 120.550-120.554 (2004). Prior to 1996, SBA regulations stated that each member of a farm entity could apply for homestead protection for his or her separate principal residence. 13 C.F.R. § 120.204-2(b)(2)(viii) (1995). This provision was dropped when SBA reorganized its regulations in 1996, but the prefatory comments to the reorganization rule indicate that such "details" should still apply. 61 Fed. Reg. 3226, 3229 (1996) (prefatory comments). Full specifications on the Homestead Protection Program should be available at SBA Area Offices.

¹⁹⁶ 7 U.S.C. § 2000(b)(3); 13 C.F.R. § 120.552 (2004).

¹⁹⁷ 7 U.S.C. § 2000(c)(4)(B), (d); 13 C.F.R. § 120.552 (2004). Both SBA and FSA must offer a right of first refusal throughout the lease period. 7 U.S.C. § 2000(c)(4)(B); 13 C.F.R. § 120.552 (2004). See note 193 of this chapter regarding FSA's interpretation of this statute to provide an option to purchase the homestead property on favorable terms.

¹⁹⁸ 7 U.S.C. § 2000(b)(2), (e).

¹⁹⁹ 13 C.F.R. § 120.551 (2004).

²⁰⁰ 7 U.S.C. § 2000(c)(6).

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- ²⁰¹ 13 C.F.R. § 120.551(a) (2004).
- ²⁰² Pub. L. No. 104-127, § 644, 110 Stat. 1103 (codified at 7 U.S.C. § 2000(c)(1)(A)) (effective April 4, 1996).
- ²⁰³ 13 C.F.R. § 120.551(a) (2004).
- ²⁰⁴ 7 U.S.C. § 2000(c)(1)(B); 13 C.F.R. § 120.551(b) (2004).
- ²⁰⁵ See, for example, the comments accompanying the August 20, 1990, rule adopting changes to the homestead protection program. 55 Fed. Reg. 33,890 (1990) (prefatory comments).
- ²⁰⁶ 7 U.S.C. § 2000(c)(1)(C); 13 C.F.R. § 120.551(c) (2004).
- ²⁰⁷ 7 U.S.C. § 2000(c)(1)(D); 13 C.F.R. § 120.551(d) (2004).
- ²⁰⁸ 7 U.S.C. § 2000(c)(1)(D). Prior to 1996, the regulations provided examples of such circumstances. The examples were: illness, employment, or conditions that made the principal residence uninhabitable. See 13 C.F.R. § 120.204-2(b)(2)(iv) (1995).
- ²⁰⁹ 13 C.F.R. § 120.551(e) (2004).
- ²¹⁰ 13 C.F.R. § 120.552 (2004).
- ²¹¹ 7 U.S.C. § 2000(c)(1)(F).
- ²¹² 7 U.S.C. § 2000(c)(1)(E); 13 C.F.R. § 120.552 (2004).
- ²¹³ 7 U.S.C. § 2000(c)(1)(E).
- ²¹⁴ 13 C.F.R. § 120.553 (2004).
- ²¹⁵ 13 C.F.R. § 120.553 (2004).
- ²¹⁶ Equal Credit Opportunity Act of 1974, Pub. L. No. 93-495, Title V, 88 Stat. 1500 (current version at 15 U.S.C. §§ 1691 *et seq.*).