

Subpart H—Immediate Disaster Assistance Program

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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 in-

clude 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 physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

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

§ 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, or declares an emergency, and authorizes Federal Assistance, including individual assistance (Assistance to Individuals and Households Program).

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

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

(i) In any county or other smaller political subdivision of a State or U.S. possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, each sustain uninsured

losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

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

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245-0121). This request should be delivered to the 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]

§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