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### **§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]

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### **§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.

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### **§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]

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### **§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]

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### **§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.

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### **§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.* SBA will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of \$14,000 or less. In addition, under a Major Disaster, SBA generally will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of \$25,000 or less.

(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]

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### **§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.)

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SBA 20

## System name:

Disaster Loan Case File--SBA 20.

## System location:

Office of Disaster Assistance, DCMS Operations Center, Herndon, Virginia. Data hosting by contractor off site in secure locations per SBA Office of Chief Information Officer ('OCIO') standards. SBA Disaster Area Offices and SBA Loan Servicing Offices. See Appendix A for SBA Disaster Area Office and Loan Servicing Office addresses.

## Categories of individuals Covered by the System Includes:

Applicants and recipients of disaster home and business loans; registrants for disaster assistance who are provided disaster home and business loan applications.

## Categories of Records in the System Includes:

Information relating to pre-application registrants, disaster home and business loan applicants and recipients of disaster home and business loans from the time of pre-application registration. These records include:

Loan applications, supporting documents, personal history, financial statements, credit information investigative reports, appraisers' reports, waivers, loan record transfers, correspondence, recommendations, authorizations, disbursement amount, term and rate, payment history, collateral, UCC filings and re-filings, collection and liquidation activities, financial statements, settlements and compromises, participating bank information, field visit reports, borrowers insurance information and loan accounting information.

## Authority for maintenance of the system:

15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the Purposes of Such Uses, These Records May Be Used, Disclosed or Referred:

f. To provide data to the Government Accountability Office ('GAO') for periodic reviews of SBA.

g. In response, to a request from a State or Federal agency in connection with the issuance of a grant, loan or other benefit by that agency which is relevant to their decision on the matter; this may be requested individually or as part of a computer match.

h. To other Federal agencies to conduct computer matching programs to locate delinquent SBA borrowers who are receiving Federal salaries or benefit payments and programs to identify delinquent SBA borrowers receiving federal salaries or benefit payments. Disclosure will be made if the records indicate the loan is in default, at least 30 days past due or to update a previous disclosure. SBA will make the disclosures to obtain repayments of debts under the provisions of the Debt Collection Act of 1982 by voluntary repayment, or by administrative or salary offset procedures.

p. To transmit data to U.S. Department of the Treasury to effect issuance of loan funds to borrowers.

q. To the Federal Emergency Management Agency ('FEMA') to coordinate the issuance of federal disaster assistance to disaster victims and monitor for duplication.

r. To the public under the Freedom of Information Act ('FOIA'), 5 U.S.C. 552.

Policies and practices for storing, retrieving, accessing, Retaining and Disposing of Records:

## Retrieval:

By applicant/recipient name, cross-referenced loan number or borrower's Social Security Number or Employer Identification Number.

Safeguards:

Access and use limited to persons with official need to know to know; electronic data access is protected by password and user identification codes.

Retention and disposal:

In accordance with Standard Operating Procedure 00 41 2, Appendix 18.

System manager(s) and address:

Disaster Area Office Directors. See Appendix A.  
Director, DCMS Operations Center, 1175 Herndon Parkway, Herndon, VA 20170.

Contesting Procedures:

Notify the officials listed above, state the reason(s) for contesting it and the proposed amendment sought.

Source Categories:

Subject, individuals, Agency employees, financial institutions, commercial credit reporting agencies, law enforcement agencies, Internal Revenue Service and Federal Emergency Management Agency. .