

(6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

(7) Other factors which undermine the economic viability of your business area.

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

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

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

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

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

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or \$2 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the \$2 million limitation. A major source of employment is a business concern that has one or more locations in the disaster area, on or after the date of the disaster, which:

(1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employed 5 percent of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

(3) Employed no less than 250 employees within the disaster area.

(b) SBA will consider waiving the \$2 million loan limit for a major source of employment only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in excess of \$2 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

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

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

(1) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including land) and damaged machinery and equipment; or

(2) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding land) and damaged machinery and equipment.

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

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

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