credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

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

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 14333, Mar. 25, 2010]

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

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

[75 FR 14333, Mar. 25, 2010]

## Subpart D—Economic Injury Disaster Loans

### § 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) or a private non-profit organization when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives;

(3) Producer cooperatives; and

(4) Small aquaculture enterprises.

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

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

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

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

### § 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

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

(b) A non-profit or charitable concern, other than a private non-profit organization;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

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

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

(h) Primarily engaged in political or lobbying activities.

[61 FR 3304, Jan. 31, 1996, as amended at 63 FR 46644, Sept. 2, 1998; 75 FR 14333, Mar. 25, 2010]

**§ 123.302 What is the interest rate on an economic injury disaster loan?**

Your economic injury loan will have an interest rate of 4 percent per annum or less.

**§ 123.303 How can my business spend my economic injury disaster loan?**

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event;

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Repair physical damage; or

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

## Subpart E—Pre-Disaster Mitigation Loans

SOURCE: 67 FR 62337, Oct. 7, 2002, unless otherwise noted.

**§ 123.400 What is the Pre-Disaster Mitigation Loan Program?**

The Pre-Disaster Mitigation Loan Program allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. This program supports the Federal Emergency Management Agency (FEMA's) Pre-Disaster Mitigation Program. This pilot program is authorized for 5 fiscal years (October—September), from 2000 through 2004, and has only been approved for limited funding. Therefore, approved loan requests are funded on a first come, first served basis up to the limit of program funds available (see §123.411).

**§ 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?**

To be included in a pre-disaster mitigation loan application, each of your business' mitigation measures must satisfy the following criteria:

(a) The mitigation measure, as described in the application, must serve the purpose of protecting your commercial real property (building) or leasehold improvements or contents from damage that may be caused by future disasters; and

(b) The mitigation measure must conform to the priorities and goals of the State or local government's mitigation plan for the community in which the business subject to the measure is located. To show that this factor is satisfied your business must submit to SBA, as a part of your complete application, a written statement from a State or local emergency management coordinator confirming this fact (see §123.408). Contact your regional FEMA