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or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

(1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or

(2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of \$200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 How much can I borrow for post-disaster mitigation for my home?

For mitigation measures implemented after a disaster has occurred, you can request that the approved home disaster loan amount be increased 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 a maximum of \$200,000.

[75 FR 14332, Mar. 25, 2010]

§ 123.108 How do the SBA disaster loan program and the FEMA grant programs interact?

After a Presidential disaster declaration is made, you may be eligible for disaster assistance, including grant assistance, from the Federal Emergency Management Agency's (FEMA) Federal Assistance to Individuals and Households Program (IHP). After you register with FEMA for disaster assistance, FEMA will consider you for IHP assistance, which includes housing assistance grants to repair or replace your damaged primary residence and temporary housing assistance (including rental assistance) to assist you temporarily with a place to live, and assistance with personal property, medical, dental and funeral expenses. FEMA may also refer you to SBA to apply for loan assistance to help repair or rebuild your home and/or to replace

personal property destroyed during the disaster. If SBA is unable to approve your loan application, or if you have damage in excess of the SBA loan amount, SBA may refer you, on a timely basis, to FEMA for IHP grant consideration to assist with your unmet personal property and transportation needs. If you are approved for the SBA disaster loan and you have received grant assistance that duplicates the damage covered by the SBA loan, such grant assistance must be deducted from your loan eligibility as described in section 123.101(c) of the regulations. All grant decisions are made by FEMA. Additionally, if additional disaster assistance is available from state, local or other agencies, SBA may refer you to the appropriate agency for consideration.

[75 FR 7546, Feb. 22, 2010]

Subpart C—Physical Disaster Business Loans

§ 123.200 Am I eligible to apply for a physical disaster business loan?

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced

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with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you (or any principal of the business) fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business entity (whether in the form of a corporation, limited liability company, partnership, or sole proprietorship) is engaged in both agricultural enterprise and a non-agricultural business venture. If the agricultural enterprise part of your business entity has suffered a physical disaster, that enterprise is not eligible for SBA physical disaster assistance. If the non-agricultural business venture of your entity has suffered physical disaster damage, that part of your business operation would be eligible for SBA physical disaster assistance. If both the agricultural enterprise part and the non-agricultural business venture have incurred physical disaster damage, only the non-agricultural business venture of your business entity would be eligible for SBA physical disaster assistance.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

(1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;

(2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of

the disaster, which makes it uneconomical to continue operations in your business area;

(3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;

(4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;

(5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expenses for your business in the business area;

(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