

## § 123.202

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

## 13 CFR Ch. I (1–1–14 Edition)

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]

### **§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?**

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, has credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability, but cannot exceed seven years if you have credit elsewhere.

(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; 77 FR 12157, Feb. 29, 2012]

**§ 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;