INTRODUCTION

1. Purpose: To establish policy for the Disaster Assistance Program.
2. Personnel Concerned: All SBA personnel involved in administering the SBA Disaster Assistance Program.
4. Originator: Office of Disaster Assistance
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CHAPTER 1

INTRODUCTION

1. AUTHORITY

a. Section 7(b)(1) of the Small Business Act, as amended, authorizes the Agency's Physical Disaster Loan Program. SBA can make loans to eligible victims of declared disasters as defined by the Small Business Act.

b. Section 7(b)(2) of the Small Business Act, as amended, authorizes the Agency's Economic Injury Disaster Loan (EIDL) Program. SBA can make loans to eligible small businesses. Eligible nonprofit organizations, and eligible small agricultural cooperatives located in a disaster area that suffered substantial economic injury as a result of the disaster.

c. Section 7(b)(3) of the Small Business Act, as amended, authorizes the Agency’s Military Reserve Economic Injury Disaster Loan (MREIDL) Program. SBA can make loans to eligible small businesses that suffered or are likely to suffer substantial economic injury as a result of an essential employee being ordered to active military duty during a period of military conflict.

d. Section 7(b)(2)(B) of the Small Business Act, as amended, authorizes the Agency to make loans to eligible small businesses that suffered substantial economic injury as a result of a natural disaster as determined by the Secretary of Agriculture.

2. RELATED RULES, REGULATIONS, AND SOPS

You can find additional program guidance in Title 13 of the Code of Federal Regulations (13 CFR), Part 123, and other Agency SOPs. These are available in the Disaster Assistance Offices and online at www.sba.gov or www.gpo.gov/fdsys.

3. GENERAL RULES OF APPLICATION AND MEANING

a. Guidance regarding processing of loan decisions and actions or requirements on loan terms and conditions shall, unless specifically excluded, be equally applicable to original processing actions (to include all forms of reconsideration) and to post-approval actions as loan modifications. Guidance of a general nature,
including file documentation, staff conduct, and matters regarding dealings with external entities, shall be applicable to all ODA staff and official matters.

b. The following should be applied in any reading of this SOP:

1. Wherever appearing in this SOP, the terms “applicant” and “borrower”, whether singular or plural, shall be deemed interchangeable terms as applicable under the facts;

2. Wherever appearing in this SOP, the terms “Loss Verifier”, “Construction Analyst”, and “Field Inspector” shall be deemed interchangeable terms.

3. All references to official titles or positions shall be deemed to include any person “acting” in the capacity under a properly authorized line of succession document.

4. All references to official titles, position or signatory authority shall include formally named designees under an authorized delegation of authority, a properly authorized DCMS responsibility access, or other written designation approved by competent authority.

4. RESPONSIBILITIES (3)

a. Associate Administrator for Disaster Assistance (AA/DA).

The AA/DA plans, directs, and administers the Agency's disaster lending programs. The AA/DA's office and staff, located in Washington, DC, comprise the Office of Disaster Assistance (ODA).

b. The Disaster Assistance Offices.

There are six Disaster Assistance Offices located nationwide. Each office is supervised by a Director and operates the disaster program under the direction of ODA.

(1) The Disaster Assistance Customer Service Center (CSC) located in Buffalo, NY is a national contact center providing services in support of ODA program delivery, which includes responding to customer inquiries on the toll-free customer service line (1-800-659-2955) and emails to the customer service mail box. (disastercustomerservice@SBA.gov). The CSC also completes outreach calls in support of the FOC offices, answers Disaster Contracting calls, and acts as a backup to SBA’s Answer Desk, responding to non-disaster SBA calls. Additionally, the CSC provides
support for the ‘electronic loan application’ by screening applications, and is also able to accept loan payments by phone.

(2) The Disaster Assistance Processing and Disbursement Center (PDC) located in Fort Worth, TX serves all U.S. states, territories, possessions, and commonwealths. The PDC mails out application materials to disaster victims. All loan applications for SBA Disaster Loan Programs should be sent to this office for processing. Application processing functions from application entry, scanning, and processing through to a decision occur in the PDC. All loan approvals, loan document generation, loan closing, and disbursement of loan proceeds are functions of the PDC.

(3) The Disaster Assistance Field Operations Center East (FOC-E) is located in Atlanta, GA and the Disaster Assistance Field Operations Center West (FOC-W) is located in Sacramento, CA. Each is responsible for SBA’s response and recovery operations, including participating in preliminary damage assessments, establishing field presence, staffing Disaster Recovery Centers and Disaster Loan Outreach Centers to issue and accept applications, answering questions about SBA’s loan programs, explaining the application process, helping individuals complete the application, and assisting borrowers in closing their approved loans. The FOC Communications Department in each FOC also disseminates information to the media, congressional offices, SBA resource partners (SBDC, WBC, SCORE), state and local elected officials, community groups and the public. The FOCs also respond to congressional inquiries.

(4) The Personnel and Administrative Services Center (PASC) located in Herndon, VA is the primary nationwide resource management support center. PASC is comprised of two distinct functional areas: Personnel and Administration.

Personnel Operations oversees the full service personnel resource management program including recruitment, staffing, benefits, pay and leave, employee relations, performance, classification, etc.

Administrative Operations is responsible for the full service administrative resource management program including support services, supply control activities, budget, procurement, travel, payroll, facilities management, and warehouse and storage facilities.

(5) The Disaster Credit Management System (DCMS) Operations Center, also located in Herndon, VA is responsible for maintaining and updating the DCMS software, interfacing with other computer systems [Data Communication System (DCS), FEMA’s National Emergency Management Information System (NEMIS), credit bureau reports (CBRs)], and the computer hardware necessary to operate the system. It
updates the system business rules, edits, and security as required by policy and procedure changes.

(6) The Disaster Verification Center (DVC) is responsible for conducting all original verifications of disaster losses. The DVC is located at the Herndon, VA location but also has staff which operates out of both Field Operations Centers.

5. **CHANGES TO THIS SOP** (4)

Disaster loan policies and guidelines cannot anticipate all of the circumstances, questions or needs that may arise in any given disaster. Therefore, these policies and guidelines may change without advance notice. ODA notifies the Disaster Assistance Offices of all changes.

6. **EXCEPTIONS TO POLICY AND SOP REQUIREMENTS** (5)

A policy exception is any recommended action not in full compliance with this SOP. Only the AA/DA can approve exceptions.

7. **TYPES OF DISASTER DECLARATIONS AND OTHER ASSISTANCE** (6)

There are six types of disaster declarations:

a. **Presidential**. This activates SBA’s physical and EIDL programs. Some other forms of Federal, State, or other assistance available in addition to SBA loans are:

(1) **Under a declaration for Individual Assistance (IA):**

(a) Rental Assistance and Home Repair Program (HA) – administered by FEMA, which is the coordinating agency for all assistance.

(b) The Assistance to Individuals and Households Program (IHP) – FEMA and the States have flexibility on the delivery of this type of grant assistance. There is an overall cap on grant assistance for any one disaster (adjusted annually in October), excluding grant monies for permanent housing construction.

(c) Grant and/or loan programs administered by state or regional entities, as available.

(d) Services provided by volunteer agencies, as available.
(2) **Under a declaration of Public Assistance (PA):** FEMA Public Assistance (PA) grant program for Private Nonprofits (PNPs) that provide essential services of a governmental nature (see subparagraph 43(b)).

b. **Administrative.** This activates SBA’s physical and EIDL programs. Generally, the only other assistance in addition to SBA is from volunteer agencies.

c. **Secretary of Agriculture (SecAg).** This activates SBA’s EIDL program.

d. **Governor’s Certification (7(b)(2)(D)).** This activates SBA’s EIDL program.

**NOTE:** Under Section 308(b) of the Interjurisdictional Fisheries Act of 1986, the Secretary of Commerce may make a determination that eligible small businesses have suffered substantial economic injury as a result of commercial fishery failures or fishery resource disasters. In the event of such determination, SBA’s EIDL program is activated under a Governor’s Certification.

e. **Military Reserve Economic Injury Disaster Loan (MREIDL) program.** This activates SBA’s MREIDL program.

8. **ATTITUDE OF SBA DISASTER PERSONNEL (7)**

The disaster assistance program is customer driven. The people coming to you for assistance have been through a traumatic experience from which they may not have recovered. You are there to help, not to further discourage them. It is absolutely essential that you exercise tact, compassion, and professionalism at all times.

9. **REFERRAL TO THE OFFICE OF INSPECTOR GENERAL (OIG) (10)**

a. When you have questions about the truthfulness or accuracy of an application or supporting data and information (including tax information), you should refer the case to the OIG. After a case is referred to OIG, and before final Agency action, the field office will not make any statement about actions taken by the OIG, except as permitted by law.

b. You should immediately report any known or suspected improper activity directly to Office of the Inspector General (OIG). This includes program irregularities, misrepresentation, and bribery overtures, attempts, or solicitations. Call the OIG Hotline at (800) 767-0385 or send a written referral to: Office of the Inspector General (OIG), 409 3rd Street SW, Mail Code 4111 Washington, DC 20416, or by email to http://www.sba.gov/ig/aboutus/overview/rsw/index.html. Copies may be sent to supervisory officials in the respective disaster assistance office.
10. **CONGRESSIONAL INQUIRIES (11)**

a. Congressional inquiries generally go to ODA or the FOC-E and FOC-W and are answered directly, where appropriate. Each center must send a copy of all Congressional inquiries and responses, or a record of telephonic congressional inquiries to the Office of Congressional and Legislative Affairs (CLA) in SBA Headquarters, ODA, and appropriate district offices.

b. Center personnel who receive an inquiry from a Congressional office, whether written or verbal, must record inquiry in the chron log and immediately refer the call to the appropriate FOC Supervisory Public Information Officer (PIO).

c. The need for a Privacy Act release arises when the congressional office begins to ask questions about specific information on why a person is ineligible, the reasons for decline, withdrawal, etc.

d. SBA cannot release personal financial (or other) information about a loan applicant or borrower to a third party, including a Congressional office, without a Privacy Act release.

11. RESERVED

12. RESERVED
CHAPTER 2

REGISTRATION, INTERVIEWING, AND SCREENING

13. DEFINITIONS (59)

a. National Processing Service Centers (NPSC). Generally, FEMA staffs and operates NPSCs in three locations, Maryland, Texas and Virginia. These nonpublic facilities are active only in Presidential disasters, and are designed to be the first contact point for disaster victims seeking assistance. The NPSC:

(1) Registers victims and answers helpline calls via a toll-free number (800-621-3362).

(2) Identifies those qualified to receive immediate referral to FEMA and those that are referred to SBA for a possible disaster loan (see 14(a)).

(3) Provides information about locations and dates of openings and closings of public assistance centers.

(4) Processes all cases for eligibility for FEMA’s Individual Assistance Program including registrations received via the toll-free number and registrations received via the FEMA public internet site at www.FEMA.gov.

(5) Refers registrants with questions concerning SBA’s program to the CSC, where CSRs address their questions.

b. Types of Field Assistance Centers.

(1) Joint Field Office (JFO). FEMA and the State establish a non-public facility to coordinate activities of all the participating disaster relief agencies and organizations. Usually, the participating agencies and organizations have representatives present at the JFO to conduct and monitor their own internal operations and to assist in the inter-agency coordination effort.

(2) Disaster Field Office (DFO). SBA establishes a non-public facility to coordinate its activities and provide administrative and management functions for disaster recovery. In Presidential declarations, SBA does not usually establish its own DFO; SBA normally co-locates with FEMA and the State in the JFO.

(3) Disaster Recovery Center (DRC). A joint Federal/State public facility where representatives of all participating Federal, State, and local disaster
relief agencies and organizations issue program applications and related information. Depending on the size and scope, FEMA may set up more than one DRC. SBA is represented in each DRC.

NOTE: In some declarations state and local officials elect to identify the various locations using different terminology, such as Local Assistance Centers (LAC) or Family Assistance Centers (FAC), etc.

(4) Disaster Loan Outreach Center (DLOC). A public facility established and staffed by SBA during an Agency or Presidential declaration to assist disaster loan applicants in obtaining applications, returning completed applications, and completing disaster loan application forms. SBA staff is also available to answer questions concerning SBA’s programs, close loans, and help with loan modifications, reconsideration and late application requests. Usually, SBA is the only agency present at a DLOC and depending on the size of a disaster may establish more than one center. In some cases, SBA remains at a former DRC location after FEMA and other agencies have left, at which point it becomes a DLOC.

(5) Business Assistance Center (BAC). A facility established by State and/or local officials and staffed by various organizations including SBA to assist businesses in recovering from the disaster.

(6) Business Recovery Center (BRC). A facility established and staffed by SBA, along with various other organizations and SBA’s resource partners during an Agency or Presidential declaration to assist businesses.

14. FEMA REGISTRATION AND THE SBA INTERVIEW PROCESS (60)

a. FEMA Registration Process - Presidential Disasters.

(1) Home loan inquirers who call the NPSC are registered on FEMA Form 90-69, "Disaster Assistance Registration."

   (a) In Presidential declarations, inquirers with household income below the minimum income levels stated in the Income Test Tables (provided by SBA) are classified as Failed Income Test (FIT). They are referred by the FEMA registrar directly to IHP, bypassing the SBA process. For statistical purposes FITs are not counted as SBA interviews (See Appendix 9).

   (b) Inquirers not classified as FIT are referred to SBA, which issues an application.
(2) Business loan (including EIDL) inquirers who call the NPSC are also registered using FEMA Form 90-69. However, because there are no FITs for business applicants, all inquirers are referred to SBA.

(3) If the applicant has not registered with FEMA, you must document the interview and record essential information (see 16(b)(4)).

b. SBA Interview Process - Agency Declarations. You must document all interviews and record essential information (see 16(b)(4)).

15. PRE-APPLICATION ENTRY (App. 8)

The DCMS Pre-Application Entry function captures data about the applicant to provide tracking from the moment of first contact. A Pre-App record also allows SBA to provide a follow-up with registrants if an application has not been received.

a. On Presidential declarations, the Pre-Application record is generated through the download of FEMA registration information.

b. On Agency declarations, the Pre-Application record is generated by direct contact through the PDC or CSC, resulting in direct entry to DCMS by the contacted office, or through the submission of an inquiry record to the PDC from field or partner locations.

16. INITIAL APPLICANT CONTACT (61)

a. Initial Interview. This is your first contact with a disaster victim. Their perception that SBA is ready to assist with a speedy recovery through its loan program depends on how well you explain:

(1) The program;

(2) The application forms;

(3) The importance of fully complying with our filing requirements; and

(4) The availability of free assistance in completing the forms at an assistance center or by calling the CSC.

b. During the initial interview:
(1) **Determine whether the disaster victim and the damaged property are generally eligible.** You must not make final eligibility determinations at the initial interview stage. If it is obvious that the applicant or the property is not eligible (e.g., the applicant does not own the property or the property is not located in a declared area) you must inform the applicant of the potential decline action and give them the opportunity to refuse the application.

(2) **Explain the application forms and process in simple terms.** After thoroughly explaining the program, furnish the disaster victim with the appropriate application forms and instruct them to return the forms by the application filing deadline. Advise the disaster victim of the availability of the Electronic Loan Application (ELA) process.

Note: We cannot refuse to issue an application to a disaster victim if they have not registered with FEMA. If the disaster victim has not done so, you should encourage them to register and advise them of the potential assistance from programs other than SBA (when applicable).

(3) **Determine likely ability to repay.**

   (a) **Perform a preliminary Fixed Debt Method (FDM) analysis to determine if applicants with household incomes above the income test table threshold are likely to have repayment ability.** If not, issue a summary decline. A **Summary Decline** is an SBA action (rule-of-two required) usually resulting in immediate referral to IHP or other organizations. This action is appropriate if repayment ability is not evident using the preliminary FDM approach during an individual interview or while screening a home loan application.

   (b) When a summary decline is warranted, the applicant must be notified in writing and referred to IHP. As appropriate, referrals to other organizations may be included.

   NOTE: Generally, when the lack of repayment ability is based on an application filed by only one individual (spouse, partner, co-owner, occupant, etc.) there is no referral to FEMA for possible grant assistance. However, if the inclusion of the income of the non-applicant spouse, partner, co-owner, occupant, etc. still results in a lack of repayment ability, a referral to FEMA for grant assistance is warranted.

   (c) **Summary decline policies do not apply to Business or EIDL inquirers or to home inquirers who have self-employment income.**
(4) **Record the Interview.** You must maintain records of interviews and applications issued. You must determine if an inquirer at a DRC or DLOC has registered with FEMA. Interviews and applications issued for inquirers who have previously registered with FEMA are counted at registration. If they have registered with FEMA, you must not report duplicate interviews or applications issued.

**NOTE:** For inquiries received from sources other than an in-person interview, the DCMS Pre-Application Entry function checks for possible eligibility issues, checks for duplicate applications, identifies possible summary declines, and creates a record of the contact and any actions taken (summary decline or application issuance).

(c) **In Agency declarations,** other organizations (e.g., Mennonite Disaster Services, etc.) may assist disaster victims unable to qualify for a loan. When an Agency declaration is issued, we will inform our personnel if other organizations are accepting referrals. If other organizations accept referrals from SBA, issue a summary decline with the appropriate referral.

17. **INTERVIEW TOPICS** (62)

a. **Home and Physical Business Loans.** You must thoroughly discuss the purpose of the program with the inquirer, including the following:

(1) **Loan limits.** Discuss the loan limits for the type of application.

(2) **Property Eligibility.** See paragraph 16 b (1).

(3) **Interest rate and terms.** Discuss the appropriate rate and terms for the declaration.

(4) **Repayment Ability.** Issuing a loan application does not guarantee that SBA will approve the loan. We analyze Federal tax return/income information to substantiate repayment ability, and review credit reports to determine if obligations, including any current or past Federal debts, have been or are being met. We may require additional documentation of income, as appropriate.

(5) **Use of Federal tax returns.** The applicant will be required to authorize SBA to obtain transcripts of Federal tax returns (FTRs) from the IRS. If the applicant is a principal of a business, SBA will also require IRS tax information for the business.
Secondary Home Ineligibility. A secondary home and its contents are not eligible for home loan consideration. However, you should explore potential eligibility under extended family or rental property guidelines.

Condominium, HOA Units. If you are made aware that a home loan inquirer has damaged real property that is part of a Condominium or Homeowner’s Association, you must follow the guidance provided in paragraphs 47 and 48.

Relocation. Generally, SBA loan funds may be used to relocate. By law, however, SBA disaster loan funds may not be used to relocate voluntarily outside the business area where the disaster occurred. The processing Loan Officer will discuss relocation eligibility.

On-Site Verification of Damage. An on-site inspection of the damaged property by an SBA representative will estimate the cost to repair or replace the disaster damaged property. Prior to either the interview or inspection an applicant may dispose of damaged property or debris for health and safety reasons or avail themselves of free or low cost disposal services. Suggest (but do not require) pictures, written lists, or receipts for property prior to removal, if practical.

Insurance Coverage and Proceeds. SBA is prohibited by law from providing assistance to applicants whose losses are covered by insurance or other compensation. You must ask if any insurance coverage was in force on the damaged property, and if a settlement was received or is expected. If so, you must advise the applicant against voluntarily applying any insurance proceeds to reduce existing mortgage(s). Explain that if the proceeds can be used to repair or replace eligible damage or losses, we will deduct them from eligibility.

Insurance Requirements on Approved Loans. If a loan is approved, SBA may require the borrower to purchase and maintain flood insurance and/or hazard insurance.

Refinancing. Refinancing of previous mortgages may be available only in certain cases where there has been substantial physical damage based on uncompensated loss. The processing Loan Officer will discuss refinancing eligibility.

Information Required. You must advise the inquirer to comply with the filing requirements listed in the applications. If a loan is approved, additional information, such as proof of ownership, may be required.
(14) Application Filing Deadline(s). You must enter the date of the filing deadline on the application, and advise the inquirer to return the completed application by the filing deadline.

b. Economic Injury Disaster Loans (EIDL). You must thoroughly discuss the purpose of the EIDL program with the inquirer. You cannot make eligibility determinations at the interview stage: therefore advise the inquirer that only eligible small business concerns, small agricultural cooperatives, or private non profits (PNPs) that are unable to obtain credit elsewhere are eligible, and then only to the extent that business and personal financial resources have been fully utilized to offset the economic impact of the disaster. Discuss the following:

(1) Legislative Loan Limit. The amount of an EIDL, together with all companion physical damage loans approved for the same individual/entity and its affiliates, may not be more than the $2,000,000 limit.

(2) Interest rate and terms. Discuss the appropriate rate and terms for the declaration.

(3) Repayment Ability. Refer to the guidance under subparagraph 17 a. (4).

(4) Use of Federal Tax Returns. The applicant will be required to authorize SBA to obtain transcripts of Federal tax returns from the IRS. Tax returns will be required for the business, principals, and affiliates, if any.

(5) Relocation. EIDL funds are for working capital purposes and may not be used to pay for the relocation of the business or business assets.

(6) Amount of EIDL eligibility. Economic injury will be determined at the time of processing, using the applicant’s financial information.

(7) Insurance Coverage and Proceeds. SBA is prohibited by law from providing assistance to applicants whose losses are covered by insurance or other compensation. You must ask the inquirer if any business interruption insurance coverage was in force and if a settlement was received or is expected. If so, you must advise the applicant against voluntarily applying any insurance proceeds to reduce existing indebtedness.

(8) Insurance Requirements on Approved Loans. If a loan is approved, we may require the borrower to purchase and maintain hazard and/or flood insurance.

(9) Refinancing. EIDL funds may not be used to refinance outstanding debt.
(10) **Information Required.** You must advise the inquirer to comply with the filing requirements in the application, including SBA Form 1368, "Additional Filing Requirements for EIDL."

(11) **Application Filing Deadline.** You must advise the inquirer to return the completed application by the filing deadline, and enter the filing deadline on the application.

18. **HOME LOAN APPLICATION FORMS** (63)

The following forms are contained in every home application package:

a. **Cover Sheet**

   (1) How Do You Apply for an SBA Disaster Loan?

   (2) What Will SBA Do Next?

b. SBA Form 5C, "Disaster Home Loan Application."

c. IRS Form 8821, "Tax Information Authorization."

d. Fact Sheet.

e. **Other Forms as appropriate, including, but not limited to:**

   (1) SBA Form 2121," Notice To All Applicants." (This form is included in all loan applications for a disaster that includes a Coastal Barrier Island Resource Area),

   (2) Cautionary notice regarding Texas Homestead Laws, etc.

   (3) SBA Form P-003, “Apply Online” Guidance

19. **BUSINESS LOAN APPLICATION FORMS** (64)

The following forms are contained in every business application package:

a. SBA Form 5, "Disaster Business Loan Application."

b. SBA Form 413, "Personal Financial Statement." One form is required for each proprietor, each limited partner who owns 20 percent or more interest, each general partner, and each stockholder owning 20 percent or more voting stock.
c. IRS Form 8821, "Tax Information Authorization." One form is required for each proprietor, each limited partner, each member who owns 20 percent or more interest, each general partner, each stockholder owning 20 percent or more voting stock, and each affiliate (see the following for ownership and affiliation definitions).

(1) You must obtain financial information from each owner and principal, as defined below. Generally, it is not necessary to obtain financial information from non-owner managers unless they have voting or management control.

An owner or principal may be:

(a) For sole proprietorships, the sole proprietor;
(b) For general partnerships, each general partner;
(c) For limited partnerships, each general partner and each limited partner who owns 20 percent or more interest in the applicant business concern;
(d) For corporations, each stockholder who owns 20 percent or more of the applicant’s voting stock; or
(e) For limited liability entities, each member who owns 20 percent or more interest;

NOTE: The owner(s) or principal(s) may be another business concern. For example, the applicant, a partnership, may have two partners; one is an individual and the other is a corporation.

(2) In some cases you must consider certain individuals or business concerns to be owners even if any one or all of them owns less than 20 percent. This is appropriate if the certain individuals/concerns:

(a) Collectively own 20 percent or more of the concern, or
(b) Otherwise control the business (e.g., voting control, management control, negative control, etc.).

For example:

(i) When two or more persons have an identity of interest, such as members of the same family or persons with common investments in more than one concern, and they collectively
own 20 percent or more; each should be considered an owner.

(ii) When an individual owns less than 20 percent of a company, serves as its president, and manages the company, this individual should be considered an owner.

(3) Business concerns are affiliates if one concern controls or has the power to control another, or if a third party controls or has the power to control both. Generally, an affiliate may be any concern of which the applicant, or its principals, owns 50 percent or more. Other relationships may exist which may cause concerns to be affiliates. These include, but are not limited to:

(a) Common ownership or management;

(b) Previous relationships or ties;

(c) Individuals or business concerns with substantially identical business or economic interests, such as family members or common investments;

(d) Business concerns that are economically dependent on each other through contractual or other relationships;

(e) Other relationships as specified in 13 CFR §121.103.

NOTE: For further information about affiliation, refer to 13 CFR §121.103. If you are unclear as to whether affiliation exists, consult your supervisor.

d. SBA Form 2202, Schedule of Liabilities.

e. SBA Form 1368, "Additional Filing Requirements for EIDL."

f. Fact Sheet.

g. SBA Form 2121, “Notice To All Applicants.” (This form is included in all loan applications for a disaster that includes a Coastal Barrier Resource Area.)

20. MILITARY RESERVIST ECONOMIC INJURY APPLICATION FORMS (68)

The following forms are contained in every MREIDL application package:
21. **FILING PERIOD** (66)

   a. **Unless extended, the deadline for returning completed loan applications is:**
      
      1. For **physical loss applications**, 60 days beginning the day after the date of declaration.
      
      2. For **economic injury applications**, 9 months beginning the day after the date of declaration.
      
      3. For **EIDLs pursuant to Secretary of Agriculture designations**, 8 months from the Secretary's designation.
      
      4. For **MREIDL applications**, the filing period begins on the date the essential employee receives a notice of expected call-up, and ends 1 year after the date the essential employee is discharged or released from active duty.

      Note: Official call-ups are the mechanism for determining the incident period for loan eligibility. Accordingly, loan requests for separate call-ups in the same fiscal year require a new loan application.

   b. **Extensions.** FEMA or SBA may authorize extensions of the filing period.

   c. **Late Filed Applications.**

      Applications must be received by SBA or postmarked by the filing deadline.

      (1) Generally, applications received or postmarked within 15 days of the filing deadline are not considered late.

      (2) Applications not received or postmarked within 15-days of the filing deadline require the applicant's written explanation for the late filing. The
request may be accepted only if we determine the late filing resulted from substantial causes essentially beyond the applicant's control. Some examples of substantial causes for late filing that are essentially beyond the applicant’s control may include, but are not limited to:

(a) Where the applicant is an individual, the serious illness of the applicant or the serious illness or death of the applicant’s immediate family member;

(b) Where the applicant is an entity, the serious illness or death of the principal owner of the applicant or his or her immediate family member;

(c) Late receipt of application by the applicant due to disaster-related reasons (frequent moves, remote location, or lack of normal mail service);

(d) The applicant or applicant’s principal owner was active-duty military officially stationed out of the disaster area during a substantial portion of the filing period;

(e) The applicant or applicant’s principal owner was out of the country during a substantial portion of the filing period;

(f) The applicant is applying for a disaster loan to repair substantial hidden damage that was discovered after the filing deadline and that could not reasonably have been discovered before the deadline;

(g) Permanent or temporary relocation outside the disaster area, causing the applicant or applicant’s principal owner to be unable to make repair, replacement, or relocation decisions;

(h) Open issues during and after the filing period including but not limited to insurance, habitability of premises, or flood or municipal zoning requirements, that prevented the applicant or applicant’s principal owner from making repair, replacement, or relocation decisions;

(i) SBA and/or FEMA error.

(3) If the applicant does not provide sufficient justification for the late filing, we advise the applicant in writing that the late acceptance of the application has not been granted.
(4) When a late application is received without a written justification or request for late filing, you must contact the applicant by phone or e-mail to determine the reason(s) for the late filing. If the late acceptance is justified, forward for final review. If attempts to contact are unsuccessful, issue a letter advising the applicant that we require a written request and explanation for the late filing.

d. Late Requests for an Application.

(1) If a request for an application is received or postmarked within 15 days of the filing deadline, it is not considered a late request. Issue the application, advising the requestor that we will accept the completed application package if it is received within 14 days from the date of the issuing letter.

(2) If an application request is not received or postmarked within 15 days of the filing deadline, require the requestor’s written explanation for the late request. The request may be approved only if we determine that the late application request resulted from causes essentially beyond the applicant’s control (see examples in (2) above). If the reason for issuing the late application is justified, you may issue the application. Advise the requestor that we will accept the late filed application if it is returned within 14 days from the date of the issuing letter.

(3) If the applicant does not provide sufficient justification for the late request, advise the requestor in writing that the late application request has not been granted.

(4) If the late application request is received without a written justification, follow the policy in subparagraph (c)(4) above.

e. A Supervisory Loan Officer must take final action on all late application requests, with the following exception:

Exception: The Applications Director or designee must take final action on a request for:

1.) Issuance of a late application that has been denied two or more times; or

2.) Acceptance of a late application, that has been denied two or more times.
Disaster loan applications can be filed in person at a DRC, DLOC, or other disaster assistance center where SBA is located. Applicants can also file their application by mailing it directly to the PDC. Additionally, applicants can complete an electronic loan application (ELA) online.

23. **SCREENING** (69)

Screening is the process of reviewing applications to determine if they are acceptable. Every effort should be made to screen applications delivered in person while the applicant (or representative) is present.

Acceptable applications must meet all filing requirements, be substantially complete, and be signed by the applicant(s) or the applicant’s authorized representative.

a. **Screener’s Responsibilities.**

(1) Determine if the application can be accepted for processing.

(a) If it is acceptable you must:

(1) Mark the application with the date it was received by the Agency.

(2) Complete the appropriate screening documents.

(3) Do not write on the application or supporting documentation (except date stamping).

(4) Prepare a deficiency letter, as appropriate, for any additional information that may be required to process the application.

(5) Forward to the PDC Application Entry section.

(b) If it is unacceptable you must:

(1) Mark the application with the date it was received by the Agency, and then line through the date and mark it “U” for unacceptable.

(2) Do not write on the application or supporting documentation (except date stamping).

(3) Advise the applicant to complete and/or provide any missing information.

(4) It is acceptable to have an application signed without a date.
b. Summary Decline at Screening. For home applications, determine the ability to repay. The screener must apply both the minimum income test and the preliminary fixed debt method approach (see paragraph 16 b. (3).). If the screener determines that the applicant’s income falls below the minimum income test, or if a home applicant lacks repayment ability, the screener must advise the applicant in writing of the decline decision, and refer the applicant to other sources of assistance as appropriate.

NOTE: For ELA applications, DCMS performs this function. In Presidential IA declarations when an ELA summary decline is determined and the FEMA registration number is lacking, DCMS will place the application in a pending summary decline sub-status for up to three days. This will allow for the possibility that the FEMA registration number will be provided via a FEMA download that may occur after the ELA Pre-Application is submitted.

24. APPLICATION ENTRY (App. 8)

The following functions are performed during Application Entry:

a. Input all incoming paper applications into DCMS.

b. Check for duplicate applications.

c. Identify companion and associated applications.

25. RESERVED

26. RESERVED
CHAPTER 3

ELIGIBILITY OF APPLICANTS FOR DISASTER LOANS

27. APPLICANTS GENERALLY ELIGIBLE (13)

Generally, eligibility for physical disaster loans lies with the legal entity or individual that owns the disaster damaged real property or contents, subject to the limitations and restrictions in paragraphs 27, 28 and 29. In order to establish preliminary eligibility, you must determine if the applicant is the occupant and/or the owner of the damaged property.

a. Applicants Legally Able to Contract Debt. The age at which an individual may legally contract to establish a debt varies among states. You must consult with Chief Legal Advisor if the applicant is under 21 years of age.

b. Businesses of Any Size. There are no size restrictions for physical business disaster loans.

c. Organizing Businesses. A business that was in the process of starting operations and had purchased fixed assets, inventory, etc., that was subsequently damaged or destroyed by the disaster is eligible. This is true even if that business had not actually "opened its doors" before the disaster occurred. We require documentation to support this "organizing stage," such as:

(1) Receipts or contractual agreements for inventory or machinery and equipment purchases; and

(2) Advertisements, employment classified ads, etc.

d. Nonprofit Organizations. Privately owned nonprofit organizations (PNPs), including but not limited to PNPs that provide essential services of a governmental nature, charitable and religious organizations, social organizations, and homeowners’ associations, are eligible. Nonprofit organizations owned by a government entity are not eligible. See paragraphs 43, 47, and 48.

e. Owners of Rental Property. Owners of commercial or residential rental property are eligible for business loans.

f. Aliens. U. S. Citizens, non-citizen nationals, and qualified aliens are eligible for disaster loans. Individuals not lawfully in the United States are not qualified aliens and are not eligible. Refer to Appendix 6 for additional information.
(1) **Home Loan Applicants.** We ask home loan applicants if they are a U.S. citizen on the application. Loan approval for qualified aliens is a matter of credit just as it is for all other applicants.

(2) **Sole Proprietors.** We ask sole proprietors if they are a U.S. citizen on the application. Loan approval for qualified aliens is a matter of credit just as it is for all other applicants.

(3) **Corporations.** Alien-owned corporations properly registered and licensed in the state where the disaster occurred are eligible.

(4) **Partnerships.** Alien-owned partnerships properly registered and licensed in the state where the disaster occurred are eligible. If any general partners or limited partners owning 20 percent or more of the applicant business are in the USA, they must be a qualified alien.

(5) **Limited Liability Entities (LLE).** Alien-owned LLEs properly registered and licensed in the state where the disaster occurred are eligible. If any member owning 20 percent or more of the applicant business is in the USA, they must be a qualified alien.

g. **Owners of Equity in Property.**

(1) **Contract of Sale.** When an applicant is purchasing the damaged property under a contract of sale or similar agreement, both the buyer and the seller may have eligibility for a portion of the disaster damage, as follows:

(a) When either party to the contract waives their claim for SBA disaster loan assistance, the other party is eligible to apply for a disaster loan in the amount of full eligibility;

(b) If a waiver cannot be arranged, each party is eligible for their pro-rata share of disaster loan eligibility in proportion to their equity in the property;

(c) If loan eligibility is split (i.e., both buyer and seller apply for loans in the amounts of their respective equities), the real estate portion of both loans must be used to restore the property;

(d) You must secure both loans when the combined total is more than $14,000;

(e) You must secure any loan to the record titleholder (the seller) requiring collateral by a mortgage on the damaged property; and
(f) If a loan to the equity owner (the purchaser) requires collateral, you must secure any loan to the buyer by either a mortgage executed by the seller, or an assignment of the buyer’s interest in the purchase contract. Consult Chief Legal Advisor on which instrument should be used to secure the property based on the order of preference and state law.

(2) Joint Ownership Interest. When two or more parties have joint ownership interest in the damaged property, each owner potentially has eligibility. SBA must not duplicate eligibility for multiple applicants. If all owners are not included as joint applicants, you must obtain an agreement from the non-applicant owner(s) waiving their eligibility to apply for SBA disaster loan assistance. This agreement may be obtained at closing.

(a) When a non-applicant owner waives their eligibility, the applicant owner is eligible to apply for a disaster loan in the amount of the full property eligibility.

(b) If a non-applicant owner is unwilling or unavailable to waive eligibility, you must determine if a deletion of the requirement for the waiver of eligibility is appropriate. In rare cases, ownership may be shared by numerous widely scattered owners (for example, among multiple descendants of an original owner). In the event that a joint owner cannot be located, the applicant must provide written certification of the inability to locate the joint owner.

NOTE: A waiver of eligibility does not eliminate the need for the non-applicant owner to execute the required security document(s) if the property is used as collateral. Refer to subparagraph 104 n.

h. Purchasers of Damaged Property Subject to a "Contract to Sell."

(1) Generally, purchasers of disaster damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster without reducing the purchase price to allow for the disaster damage, have eligibility, rather than the seller. You must deduct from eligibility the proceeds of any insurance or other compensation for damages received by either party.

(2) Purchasers of disaster damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster with a reduction to the selling price, may have eligibility. The purchaser is eligible to the extent that the damage is not otherwise compensated. (by insurance or otherwise) You must consider any reduction in the purchase price as compensation, and reduce eligibility accordingly.

NOTE: Purchasers of disaster damaged property which was not under a contract to sell prior to the disaster may be eligible, to the extent that the change of ownership involves other family members, close relatives, partners, officers, or long-time
employees. If you justify this change in ownership in the case file, these applicants retain eligibility (less any compensation/recovery by either the buyer or the seller) even if the disaster damage results in a reduction in the purchase price.

i. Applicants who "Walk Away" from their Mortgage(s) are Eligible.

In some states, a mortgage foreclosure sale cannot result in a deficiency judgment against the purchaser under a purchase money mortgage.

(1) When applicants walk away from their financial obligation(s), the amount of the disaster loan must not exceed their equity (where state laws permit mortgagors to walk away from their obligations). Equity is defined as SBA's estimated predisaster fair market value (FMV) of the damaged or destroyed real estate less all recorded liens the applicant can and does walk away from.

(2) Those disaster victims who can and do walk away from their obligations, regardless of their reasons for walking away, may borrow only the lesser of their net disaster loan eligibility or equity. This also includes situations where the damaged property is deeded back to a mortgage holder, who confirms in writing that there is no further liability on the part of the purchaser.

NOTE: When applicants are permitted to walk away, you must limit eligibility in accordance with the above policy regardless of any other real property eligibility considerations.

For example, an applicant's real property has a FMV of $200,000 and a first mortgage principal balance of $175,000. The property is condemned by local authorities and is a total loss under our guidelines. The applicant decides to walk away and the mortgage holder agrees to accept the deed with no further liability. In this case, the applicant did not suffer a $200,000 loss, but rather an equity loss of $25,000, which represents their maximum eligibility.

(3) Applicants who walk away from their obligations in states, which do not permit them to do so, retain full eligibility. However, there may be serious credit concerns due to the contingent liability of the debt walked away from. This also includes situations where a private party is the mortgage holder and they refuse to accept the deed or remove further liability from the purchaser.

j. Beneficial Owners.

(1) Individual local chapters of eleemosynary (i.e., charitable, nonprofit) organizations having full use of and benefits from, property owned by the parent organization are each eligible for separate SBA physical disaster loans.
For example, the American National Red Cross is vested with legal title to the real properties used by the various Red Cross chapters; however, each chapter raises its own funds, controls the use of the property, and is the "beneficial owner" of the property. We do not combine applications from several Red Cross chapters (or other similar organizations) as though they were affiliated.

(2) A mortgagee (mortgage holder) who began legal action against the defaulting property owner prior to the disaster is eligible if all other relevant criteria are met. Generally, you should consult Chief Legal Advisor to determine eligibility.

k. Non-owner applicants who must repair or replace the damaged or destroyed property are eligible. The two most common non-owner applicants are:

(1) **Bailee-for-Hire.** This occurs when property owned by one party is physically in the possession of another party at the time of the disaster. You should discuss bailment eligibility matters with counsel.

(a) Bailees include but are not limited to: warehousemen, garage keepers, parking lot operators, laundries, dry cleaners, automobile and other repair shops, and pawnbrokers.

NOTE: This situation does not apply to property obtained by the pawnbroker following the customer's failure to redeem.

(b) If the **bailee** is legally liable and will actually compensate the bailor for an uninsured loss of bailed property, the **bailee** is the one who suffered the loss and has the eligibility to file an application. If not, the **bailor** is eligible.

(c) In establishing bailee eligibility, the case file must include evidence that:

(i) The loss is not covered by insurance from either party;

(ii) The owner is requiring the bailee to pay for the loss; and

(iii) The owner will not file for SBA disaster loan assistance relating to that particular loss.

(2) **Tenants.** A lease may require a non-owner tenant to repair/replace disaster damages to the owner's real property in addition to the tenant's leasehold improvements. If so, the case file must contain:

(a) A complete, legible copy of the lease in effect at the time of the disaster. If there was no written lease in effect at the time of the
disaster, you must obtain a written statement from the lessor indicating the type of arrangement that was in effect at the time of the disaster, and who has responsibility for repairing damage to the real estate, other than leasehold improvements. You should inform the applicant and the lessor that a formal written lease will be required if a loan is approved to repair the real estate damage;

(b) Documentation that you have reviewed the lease agreement (or written statement of the arrangement in place at the time of the disaster) with counsel to determine if the appropriate "repair responsibility" clause is specific enough to warrant eligibility (a standard clause merely requiring the property to be maintained in good order does not warrant eligibility); and

(c) Verification from the applicant and the owner that the loss is not compensated by insurance.

l. Owners of Leasehold Improvements (LHI).

(1) The lessee (tenant) who owns damaged/destroyed LHI at the time of the disaster is eligible for the improvements. The tenant who installed the LHI at the tenant’s expense prior to the disaster is considered to be the owner, even if the lease states that ownership of improvements conveys or will convey to the lessor. Eligibility remains if the tenant relocates.

(2) Tenant eligibility for real estate or leasehold repairs which are owned by the landlord is site-specific and not transportable to a new location. For example, if the landlord owns LHI, but the lease requires the tenant to repair/replace disaster damage, LHI is eligible for repair/replacement at the disaster location, but LHI is not eligible for relocation.

m. Nurseries. SBA regulations define nurseries as 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. Nurseries are not eligible for physical disaster loans.

For purposes of physical disaster loan eligibility, a business deriving less than 50 percent of annual receipts from the production of nursery products is not an agricultural enterprise (see paragraph 29 g) and is eligible. Refer to paragraph 37 c. for EIDL eligibility.

n. Owners of Property That is the Primary Residence of Another May Be Eligible.

(1) As business applicants, if:
(a) The property is held for rental income instead of for the owner's recreation; and

(b) Qualifies under §280A of the Internal Revenue Code (26 U.S.C.) for deduction of ALL operating expenses.

**NOTE:** For disaster loan purposes, a qualified rental property is property used predominately for income production instead of the owner's recreation. Generally, properties used by the owner for more than 14 days during the tax year would not qualify as true rentals.

(2) As **home** applicants, if:

(a) The individual(s) occupying the home are close family members, lifelong family friends, long time business associates or employees, or maintain more than a casual relationship with the owner(s); and

(b) You confirm there has been, and remains, the intent to provide long-term, housing to those individuals. (A short-term occupant in a rent free vacation home would not qualify as the owner for this exception. For example, a son owns and maintains a home for his elderly mother. The mother pays no rent to the son. By definition, the home is the mother's primary residence, but for disaster loan purposes, the son is the eligible applicant since eligibility is tied to ownership, not occupancy.

We do not require the occupant to be a joint applicant on a loan to repair the owner's building to establish eligibility. Include the occupant only when necessary for credit considerations. The occupant has separate eligibility for personal property (PP) losses.

*If the occupant chooses to vacate after the disaster through no action of the applicant, eligibility may still exist but must be justified.*

(c) It is possible for one applicant to apply for and obtain more than one home loan for damages resulting from the same disaster. For example, the applicant has damage to their primary residence and damage to the residence occupied by another. If this occurs:

(i) You must combine the loan amounts for purposes of determining the secured threshold; and

(ii) The combined dollar amount of the loans cannot exceed the administrative limit applicable to a single home loan.
Native Americans. Disaster declarations can include all or a portion of an Indian Reservation. Individual Native Americans who own property located on a reservation are subject to certain eligibility requirements and restrictions.

(1) Home Loan Applicants.

(a) Personal Property Losses. Native Americans who live on a reservation are eligible to apply for personal property losses. They are subject to the same eligibility requirements as any other disaster victim.

(b) Real Property Losses. Generally, eligibility for real property losses to a primary residence located on a reservation is limited to those structures or improvements associated with the primary home. There is no eligibility for the land or improvements owned by the tribe, since we consider the tribe to be a "governmental entity." You may also apply the concept of beneficial ownership to establish eligibility (see subparagraph 27 j.).

(2) Business Loan Applicants.

(a) Individually owned businesses located on a reservation are eligible to apply for losses to business property, except for land or improvements owned by the tribe, and are subject to other program requirements.

(b) Native American Tribal Owned Businesses. SBA considers Native American tribes "governmental entities." They are ineligible for disaster assistance. However, in certain circumstances a tribal corporation may be separate from the tribe. Under the following provisions, and with required documentation, Chief Legal Advisor should consider eligibility of a tribal owned business.

The loan package must include the tribe's governing instrument (i.e., constitution or business charter) and the tribal corporate charter (may be an ordinance or resolution of tribal council). Examine the documents for the following:

i. The governing document must expressly set forth powers and authorize delegation to a (business) committee (e.g. to manage the economic activity of the tribe).
ii. Chartering a tribal corporation must be a direct mode of executing the expressed powers (see subparagraph (1) above).

iii. The charter authorizing a tribal corporation must designate the corporation to be separate and distinct from the tribe.

iv. The tribal corporate charter must contain a waiver of sovereign immunity. This may be accomplished:

   a. With an express waiver of sovereign immunity; or

   b. By use of a sue or be sued clause, in which case U.S. (Federal) courts should be specifically designated to be among the "courts of competent jurisdiction."

v. The tribal corporation must have its own assets to pledge as security for the loan (because the waiver in subparagraph (4) above does not apply to tribal property or assets). We must examine the assets pledged to assure that they are not tribal property nor among the tribe's assets being held in trust or restricted status.

vi. The tribe may include a written analysis by its attorney in support of the loan application and related documents.

Consult Chief Legal Advisor or designee in cases in which eligibility is not clear.

28. RESTRICTIONS ON APPLICANT ELIGIBILITY (14)

   a. **Equal Credit Opportunity Act (ECOA).** SBA may not arbitrarily require the signature of a non-applicant owner or spouse to join in a loan application solely due to marital status or ownership. Therefore we cannot deny eligibility based on a non-applicant owner’s or spouse’s refusal to join the application or sign the Note (see appendix 12).

   ECOA also prohibits discrimination on the basis of race, color, sex, marital status, religion, national origin, age, receipt of income from a public assistance program, and the exercise in good faith of rights under the Consumer Credit Protection Act. It applies to all loan programs covered in
this SOP. For business loan applications it covers, sole proprietors, partners, corporate officers, directors, and stockholders.

b. Businesses Considered as Hobbies. Some endeavors constitute hobbies of the owner even though they are organized as a business. As hobbies, they are not eligible for physical loss or EIDL assistance. If you have reason to believe that an endeavor is in fact a hobby, determine if IRS has reviewed the business status. In the absence of an IRS review, consider whether the business is properly licensed by appropriate authorities, and whether reasonable efforts have been made to operate as a business rather than a hobby.

c. Applicant's Character.

(1) Felony Committed During a Riot or Civil Disorder or Other Declared Disaster. Individuals convicted during the past year of a felony during and in connection with a riot or civil disorder or other declared disaster are not eligible (1106(e) of P.L. 90-448, Department of Housing and Urban Development (HUD) Act of 1968 and 13 CFR §123.101(a)). You must decline their application for policy reasons.

(2) Criminal Arrests/Indictments/Convictions/Parole/Probation. It is not in the public interest for SBA to extend financial assistance to individuals who are not of good character. Applications cannot be approved without appropriate clearance from ODA when the applicant or one of the principals of the business:

   (a) Have records indicating an arrest, indictment, or conviction for a criminal offense; or

   (b) Are currently on parole or probation.

d. Production and Distribution of Obscene Material. By statute (Small Business Act §4(e)), we cannot provide assistance to any business concern or other person engaged in the production or distribution of any product or service determined to be obscene by a court of competent jurisdiction.

e. Certification of Compliance with Child Support Obligations.

(1) Home Loan and Sole Proprietor Applicants. By statute (Small Business Act §4(f)), at the time of loan closing, applicants must certify that they are not more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or state agency providing child support enforcement services).
(2) **Other Business Loan Applicants.** The above restriction also applies to certain business principals. If any business principal with a 50 percent or greater ownership interest in the applicant is more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or State agency providing child support enforcement services), you can process the application only if that individual(s) will divest all direct and indirect interest in the business. The CD/PDC may recommend approval. The AA/DA must take final action.

f. **Membership Groups.**

(1) Whenever a fraternal organization, country club, civic, or other membership group requests disaster loan assistance, you must immediately notify the applicant in writing that:

   (a) SBA's regulations apply to their membership policies;

   (b) Consideration of race, color, religion, sex, handicap, age, or national origin of applicants for membership in the organization would, during the term of the loan, be inconsistent with the non-discrimination requirements of the Civil Rights Act; and

   (c) SBA will consider that SBA’s regulations override any existing restrictions in the national or local charter, by-laws, or regulations of the organization denying membership because of race, color, or national origin.

(2) We must be satisfied that enforcement of this nondiscrimination agreement will not result in the local chapter's loss of the national charter or possibly its income from membership fees. The loss of either could impact the organization's ability to repay.

(3) The Department of Justice has issued an opinion that these restrictions apply to ethnic, fraternal, or social organizations that use national origin as a membership criteria, such as Sons of Italy, Friendly Sons of St. Patrick, etc., and they are subject to the provisions of Title VI of the Civil Rights Act of 1964. Therefore, they must agree to admit members without regard to national origin as a condition of receiving a disaster loan.

(4) **The applicant must provide written certification that they will comply with these nondiscrimination requirements.**

(5) **Exemptions from the Nondiscrimination Requirements Under the Civil Rights Act.** These exemptions pertain only to gender discrimination, and apply to:
(a) Educational institutions of religious organizations with religious tenets contrary to the nondiscrimination law;

(b) Educational institutions training individuals for military service or the merchant marine;

(c) Social fraternities or sororities which are tax exempt and whose membership primarily consists of students in attendance at an institution of higher education;

(d) Certain voluntary service organizations:
   (i) YMCA;
   (ii) YWCA;
   (iii) Girl Scouts;
   (iv) Boy Scouts; and/or
   (v) Campfire Girls.

(e) Boys and girls conferences (the American Legion Boys State, Boys Nation, Girls State, and Girls Nation Conferences) and promotional activities of secondary schools or educational institutions for these conferences;

(f) Father-son or mother-daughter activities at educational institutions, so long as the activities are provided for students of both sexes; and

(g) Institutions of higher education scholarship awards in "beauty pageants" as long as the pageant complies with the other nondiscrimination provisions of Federal law.

29. **APPLICANTS GENERICLY INELIGIBLE** (15)

   a. **Purchasers of Disaster Damaged Property** are ineligible, including, but not limited to, the following.

   (1) **Businesses.** This includes substantial change in ownership, which is defined as a change in ownership of more than 50 percent of the equity. (This restriction does not apply to those transactions described in subparagraph 27.h.)
(2) **Homes.** (The restriction also does not apply to those transactions described in subparagraph 27 h.)

b. **Publicly Owned Institutions and Public Entities.** Cities, counties, etc., are ineligible for SBA disaster loans.

c. **Assumption of Risk and Failure to Comply.** Applicants who assumed the risk or possibility of loss or failed to comply with the terms and conditions of their prior SBA loans (including loans subsequently sold to a third party) are ineligible.

   (1) **Assumption of risk** is evidenced by the omission of a required act, such as failure to maintain insurance (see subparagraph (2) and (3) below). This conforms the eligibility for disaster loans to the standards of the National Flood Insurance Program (NFIP) in assessing the risk of loss and mitigating against future floods.

   Owners of property located between a river and a levee or in a flowage easement are subject to the same restrictions as disaster victims located in any other area of flood risk.

(2) **Failure to Maintain Required Federal Flood or Other Insurance.**

   (a) Recipients of prior disaster loans who did not maintain required Federal flood or other insurance are not eligible for any SBA disaster loan assistance caused by any type of future disaster.

   (b) For any disaster loan made in 1982 or later (and still outstanding) covering property then located in a special flood hazard area (SFHA), you must assume that flood insurance was required. If there was no flood insurance in effect for property in the SFHA at the time of the current disaster, the applicant is in violation of the LAA and you must decline the application.

   (c) This restriction includes subsequent flood damage which exceeds the amount of flood insurance the applicant was required to maintain by the terms of the LAA.

   (d) See also paragraph 107(m).

(3) **Compliance With Flood Insurance Requirements of Prior SBA (Non Disaster) Business Loans.** Disaster loan applicants who are not in compliance with flood insurance requirements of existing SBA business loans (e.g., 7(a) or 504) are ineligible. There were variations in procedures related to flood insurance requirements in non-disaster SBA loans and you cannot assume that maintenance of flood insurance was a requirement of those loans. When an applicant has an outstanding SBA business loan, the following steps must be taken.
(a) You must check with the appropriate SBA district (or other servicing office) to determine what specific flood insurance requirement (if any) was a condition in each loan authorization.

(b) In many cases, a general "if the property is in a flood zone" stipulation (commonly known as the if/when clause) was included in loan authorizations. You must determine if the borrower was notified by SBA or a participating lender that the property is in an SFHA and that the requirement to purchase flood insurance applies. Evidence of notification can include:

(i) Documentation in the case file that flood insurance was purchased to satisfy a loan stipulation; and

(ii) Evidence that flood insurance was purchased prior to disbursement of the loan.

NOTE: We will treat an absence of any written documentation as a lack of notice and consider the if/when stipulation is satisfied.

If the loan authorization contains such a clause, and no evidence of notification exists, see Paragraph 107(n).

(c) When the borrower has complied with the stipulation of their LAA, or when the available written record is inconclusive, the borrower is otherwise eligible.

(d) When the disaster loan applicant did not comply with the flood insurance stipulation for a prior loan, they are ineligible.

(4) Failure to Comply With Loan Authorizations. Generally, applicants who did not comply with the terms and conditions of the loan authorization(s) of prior SBA loan(s) (including unsatisfactory loan repayment experience, failure to purchase and maintain stipulated fire and extended coverage insurance, etc.), are ineligible. You must justify any variance from this general policy.

d. Applicants who do not intend to repair or replace damaged property are ineligible.

e. A Mortgage Holder who both instituted foreclosure action and acquired title after the disaster is ineligible.

f. Owners of Unimproved Real Estate held for speculation, investment, or future development are ineligible (see limited exception at subparagraph 49.b.(2)).

g. Farmers/Ranchers/Aquaculturists.
(1) Under section 7(b) of the Small Business Act, SBA may not provide disaster loans to agricultural enterprises. A business may be primarily an agricultural enterprise but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc.

(2) Section 18(b) of the Small Business Act defines agricultural enterprise as those businesses engaged in the production of food and fiber, ranching, and raising of livestock (including feedlot operators), aquaculture (see exception in subparagraph (3) below), and all other similar farming and agriculture related industries. This definition is not limited to products for human consumption. Most agricultural enterprises fall into Industry Sector 11 of the North American Industry Classification System (NAICS).

(3) Aquaculture is included in the statutory definition of an agricultural enterprise, and is ineligible for physical disaster loan assistance, although it may be eligible for EIDL assistance (see paragraph 36 b. (5)). Aquaculture is defined as the propagation and rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose. An aquaculture operation generally is engaged in husbandry of aquatic organisms on grounds which the applicant owns, leases, or has an exclusive right to use. Exclusive use-rights are usually documented by a lease or a permit specifically identifying the waters available for the applicant's use. For example, oystermen who seed private grounds which they own or rent, are engaged in aquaculture and are ineligible for physical disaster loan assistance. Public ground oystermen, however, who do not have exclusive use of any area, are eligible. See also paragraph 32 d.

h. Concerns Engaged in Illegal Activities.

i. Concerns Engaged in the Sale of Products or Services or Live Performances of a Prurient Sexual Nature.

j. Members of Congress.

(1) 18 U. S. C. §431 prohibits SBA from making a disaster loan to an unincorporated business or a disaster home loan, when a Member of Congress holds a direct or indirect ownership interest.

(2) In the disaster loan program, with limited exceptions, Members are prohibited from entering into a contract directly (i.e., a mortgage, deed of trust, promissory note or personal guarantee) with SBA. However, the law does not prohibit SBA disaster
loans to corporations in which a Member holds an ownership interest that would not require the Member of Congress to sign a contract with SBA.

For example, if the Member is required to sign the SBA guarantee, the applicant corporation would not be eligible. See paragraph 105 for guarantee requirements.

(3) Some examples of the application of this requirement are:

(a) SBA can make a disaster loan to a corporation in which a Member owns stock if the Member does not execute a mortgage, deed of trust, note, security agreement, or personal guarantee or any other contract directly with SBA.

(b) SBA cannot make a disaster loan to a Limited Liability Entity (LLE) in which a Member has a membership interest.

(c) SBA cannot make a disaster loan to a partnership in which a Member is a partner.

(d) SBA cannot make a disaster loan to a sole proprietorship owned by a Member of Congress.

(e) SBA cannot make a disaster loan for damage to a home in which a Member has a direct or indirect ownership interest or if the Member has a fiduciary interest (e.g., power of attorney or trustee) with respect to the home.

NOTE: The prohibition contained in 18 U. S. C. §431 applies differently in the context of the SBA 7(a) and 504 loan programs.

(k) Good Standing. A legal entity which is not in good standing in the state in which it is organized and the state in which the disaster occurred is not eligible.

30. RESERVED

31. RESERVED
CHAPTER 4

APPLICANT ELIGIBILITY FOR ECONOMIC INJURY DISASTER LOANS

32. DEFINITIONS (116)

For purposes of establishing EIDL eligibility, the following definitions apply.

a. Small means any business concern or agricultural cooperative meeting the applicable size standard for its industry.

b. Business concern or concern means any business entity organized for profit, with a place of business located in the United States which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. The business concern may be in the form of an individual proprietorship, partnership, limited liability entity, corporation, joint venture, association, trust, or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business concerns in the joint venture. Generally, concerns eligible for EIDLs must conform to SBA's 7(a) program requirements.

c. Agricultural cooperative means those cooperatives acting pursuant to the provisions of the Agricultural Marketing Act [12 U.S.C. 114(j)] and Section 3(j) of the Small Business Act. These associations operate for the mutual benefit of the members (producers or purchasers) and conform to (1) or (2) and, in all cases, (3) below:

(1) No member of the association is allowed more than one vote because of the amount of stock or membership capital they may own therein;

(2) The association does not pay dividends on stock or membership capital in excess of 8 percent per annum; and

(3) The association does not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of the business transacted with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by the association.

d. Aquaculture is defined as the propagation and rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose (as defined by the National Oceanic and Atmospheric Administration). Aquaculture enterprises fall under NAICS codes 112511-Finfish...
Farming and Fish Hatcheries; 112512-Shellfish Farming; 112519-Other Aquaculture (animal organisms, e.g. turtles, frogs, alligators); and 111998-Other Miscellaneous Crop Farming (plant organisms, e.g. algae, seaweed). Eligible aquaculture can take place in a natural or manmade environment, and can involve both marine and freshwater species. See also Paragraph 29 g. (3).

e. For private nonprofit organizations, refer to Paragraph 43, 47 and 48.

33. **BASIC EIDL ELIGIBILITY DETERMINATIONS** (117)

You must make three basic eligibility determinations on all EIDL applications.

a. **Location.** Section 7(b)(2) of the Small Business Act requires that all EIDL applicants be located in a declared disaster area. This includes all counties covered in the declaration. There must be a physical presence in the disaster-affected area for a business to be eligible. An applicant's economic presence alone in the affected area(s) does not meet this location requirement, nor does it meet the intent of the regulation. The applicant must demonstrate a physical presence. The physical presence must relate to the claimed economic injury and should be tangible and significant. Merely having a P.O. Box in the disaster area would not qualify as a physical presence.

b. **Business Activity.** You must consider two measures of business activity. Both must be an eligible activity in order for the applicant to be eligible for EIDL assistance.

   (1) **Business Loss Activity:** The activity for which the loss is being claimed must be eligible. Agricultural enterprises are the most common ineligible activities conducted by sole proprietors. If this is the primary industry, the proprietor is ineligible regardless of the nature of the activity claiming the loss. (For the specific policy concerning the eligibility of agricultural enterprises, see subparagraph 36 b.(5)).

   (2) **Primary Industry:** You must determine if the applicant business concern, combined with its affiliates (refer to SOP subparagraph 19 c.(3), 75 b., and 13 CFR §121.103 for guidance on determining affiliation), conducts more than one type of business. If so, you must identify the primary industry of the affiliated group. This is generally the activity producing the most revenue (refer to 13 CFR §121.107). The primary industry of the affiliated group must be an otherwise eligible activity for the applicant to be eligible, regardless of the nature of the loss activity.

For example: Joe Smith owns 100% of a corporation named ABC, Inc. which operates a clothing store. ABC, Inc. applied for an EIDL as a result of a 2010 disaster. Mr. Smith also owns a farm and reports income from
his farm operation on Schedule F of his personal IRS Form 1040, Federal Income Tax Return. He reported gross revenue of $750,000 for the farm operation in 2009 which was the year preceding the disaster. The gross revenue for ABC, Inc. in 2009 was $240,000. As a result, the primary industry of the affiliated group is farming which is ineligible for EIDL assistance. Farming is the primary industry because the farm operation generated more gross revenue in the year preceding the disaster than the clothing store. This means neither the farm operation nor ABC, Inc. would be eligible to receive an EIDL. However, if ABC, Inc. had physical losses as a result of the disaster, they would be eligible for a physical loan only.

c. Size. An applicant for an EIDL must be a small business concern. The applicant business, including any affiliates, must satisfy two criteria (13 CFR§121.301):

(1) The size of the applicant alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged; and

(2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher.

(For guidance on making the size determination, refer to 13 CFR §121.)

NOTE: Private nonprofit organizations of any size are eligible.

34. INDEPENDENTLY OWNED AND OPERATED BUSINESS (118)

Section 3(a) of the Small Business Act states: "For the purpose of this Act, a small business concern … shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation …" You decide these issues on a case-by-case basis.

a. Critical Factors. You must examine two critical factors to determine if a business is independently owned and operated.

(1) The owner(s) must have a business risk resulting from investing in facilities or equipment and by incurring ongoing expenses, which must be paid regardless of whether the operation generates a profit. The owner must share the risk of both the profits and the losses.

For example, an individual participates as a crewmember on a fishing boat and does not have an investment in the boat or equipment. The crewmember works for a share of the catch, reduced by certain trip
expenses (fuel, food, etc.), which are deducted from the catch. If the catch is insufficient to cover the expenses, the crewmember incurs no liability for trip expenses. Thus, this individual is not a small business concern and is not eligible for EIDL assistance.

(2) The business operation must be free from significant control by other concerns (e.g., the customers or businesses that pay for its services). However, in determining what constitutes significant control, consider that a state licensing prerequisite that requires an independent contractor to work in conjunction with a licensed firm does not, in and of itself, disqualify an independent contractor from participation in the EIDL program.

For example, in the real estate industry, the broker/agent relationship is often more related to State law rather than any sort of significant day-to-day control over what the agent does in terms of how they conduct their business, build their clientele, or market their services. Many agents operate to a great deal independently of the broker with their own websites, marketing materials/programs, and may even have their own staff including licensed assistants and transaction coordinators. In such cases, it is possible, considering all relevant circumstances, to find that the agent is an independently owned and operated business and may be eligible.

Some factors to consider in making eligibility determination include:

(a) An agent is engaged by the broker for an indefinite period of time.

(b) The agent is not required to follow a routine or schedule set by the firm and is free to set his own working hours.

(c) The broker firm may furnish forms, records, and promotional materials, but the agent furnishes his own place of business, equipment, all other materials, and supplies used in performing his services.

(d) The agent may independently hire, supervise, pay, and discharge others assisting him.

(e) The broker firm pays the agent strictly on a commission basis. The agent receives no pension, sick leave days, paid vacation days, or bonuses and has no guaranteed minimum amount of pay. The broker does not carry workmen’s compensation insurance on the agent and does not deduct social security taxes or Federal or state income taxes from the agent’s pay.
(f) Substantially all payments for their services as agents are directly related to sales, rather than the number of hours worked.

(g) Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes.

(h) Possession of a business license does not in and of itself create eligibility.

(i) If the applicant is a franchise, refer to Chief Legal Advisor or designee for eligibility guidance.

b. Effect of IRS Guidelines. Not all self-employed persons or independent contractors for tax purposes rise to the level of "small business concern" as required for EIDL eligibility. Merely filing a Schedule C with the Federal Tax Return does not qualify the individual as an independently owned and operated business. We are not bound by IRS guidelines for determining if an individual is an employee or an independent contractor. EIDL eligibility is contingent upon compliance with the business risk and freedom from control factors.

35. APPLICANTS GENERALLY ELIGIBLE (114, 119)

a. Eligible Concerns. The Small Business Act authorizes SBA to make working capital loans to eligible farm related and non-farm related small business concerns and small agricultural cooperatives which:

(1) Are located within the declared disaster area; and

(2) Have suffered, or are likely to suffer, substantial economic injury as a result of the disaster; and

(3) Do not have credit available elsewhere.

NOTE: A small business need not suffer any physical damage to be eligible for EIDL assistance.

b. Generally, applicants eligible for regular SBA 7(a) business loans are also eligible for EIDLs. However, owners of rental property (landlords) and PNPs are eligible for EIDLs, although not for regular SBA business loans.

36. INELIGIBLE EIDL APPLICANTS (120)

a. The following applicants are not eligible for EIDL or 7(a) assistance.

(1) Religious Organizations.
(2) Eleemosynary (Charitable) Organizations.

(3) Nonprofit Organizations that are not privately owned.

(4) Consumer and Marketing Cooperatives. However, other cooperatives and small agricultural cooperatives meeting applicable size standards are eligible.

(5) Gambling Concerns. Concerns that derive more than one-third of their annual gross revenue from legal gambling activities.

(6) Casinos, Racetracks, Etc. Businesses whose purpose for being is gambling (such as casinos, racetracks, poker parlors, etc.) are not eligible for EIDL assistance regardless of their ability to meet the one-third criteria established for otherwise eligible concerns.

(7) Concerns Engaged in Illegal Activities.

(8) Lending or Investment Concerns.

(9) Speculative Activities.

(10) Pawn shops, when 50 percent or more of previous year’s income was derived from interest.

(11) Real Estate Developers. Establishments primarily engaged in subdividing real property into lots and developing it for resale on their own account.

(12) Multi-level Sales Distribution (Pyramid) Concerns.

(13) Loan packagers who derive 30 percent or more of their annual volume from the preparation of applications seeking financial assistance from SBA.

(14) Concerns with Principals Incarcerated, on Parole or Probation. The concern remains ineligible if the parole or probation is lifted solely because it is an impediment to obtaining a loan. [see possible exceptions in subparagraphs 74 d.]

(15) Government-owned concerns, except for businesses owned or controlled by a Native American tribe. Refer to paragraph 27 (O)(2)(b) for guidance regarding tribal owned businesses.

(16) Political or Lobbying Concerns
(17) Concerns Engaged in live performances of, or the Sale of Products, Services, of a Prurient Sexual Nature.

(18) Businesses considered as hobbies.

b. The following applicants are not eligible for EIDL assistance; however, they may be eligible for 7(a) assistance.

(1) Concerns Not Located in the Declared Disaster Area.

(2) Concerns Determined by SBA to have Credit Available Elsewhere.

(3) Concerns Involved in Change in Ownership Situations. Concerns which had a substantial change of ownership (more than 50 percent) after the impending economic injury became apparent, and no contract of sale existed prior to that time are ineligible (see possible exceptions in subparagraph 27 h.).

(4) Concerns Established Post-Disaster. If a small concern was established after an impending economic injury became apparent, the owner assumed the risk and did not incur economic injury.

NOTE: The only exception to the above subparagraph b.(3) & (4) is under a Secretary of Agriculture designation. In the case of a single declaration covering multiple years, an eligibility determination due to the change in ownership or creation of a new business after the onset of the disaster would need further review. This determination is due to the delayed time from the onset of the disaster to the date the disaster is declared and should be conducted on a case-by-case basis. Historically, a new or separate declaration for each year is issued and this may give eligibility for the business.

For example: The Secretary of Agriculture declaration has an incident period that covers January 1, 2008 through June 30, 2010 or multiple years due to drought conditions. The onset of the disaster was January 1, 2008 but the applicant did not purchase the business until January 2, 2009. In this example, the onset of the incident date is prior to a change in ownership or new business creation. However, the business is determined to be eligible from the date the business was purchased since crops in 2009 and 2010 were affected by the drought conditions.

(5) Agricultural Enterprises. If the primary activity of the business (including its affiliates) is agricultural, as defined in Section 18(b)(1) of the Small Business Act, neither the business nor its affiliates are eligible for EIDL assistance even though the non-agricultural portion of an agricultural
enterprise may be eligible for business disaster assistance (see subparagraph 29).

Exception: Small businesses which are engaged in aquaculture (see paragraph 32 d.) are eligible for EIDL assistance, under section 3(z) of the Small Business Act. PNPs engaged in aquaculture are not eligible for business for SBA disaster loan assistance.

(6) **Feedlot Operators.** Feedlot operators are not eligible for EIDL assistance, regardless of the manner in which they operate (i.e., buying and selling the livestock at their own risk; feeding livestock owned by another and being compensated based upon weight gain; feeding livestock owned by another and being compensated on the basis of cost of feed plus space rent). A feedlot operator constitutes an "agricultural enterprise" as defined by the Small Business Act.

(7) Members of Congress who hold a direct or indirect ownership interest in an unincorporated small business, in collateral, or in a corporation, LLE, or partnership that would require them to enter into a contract with SBA (see subparagraph 29.j).

37. **OTHER ELIGIBILITY MATTERS** (121)

a. **Drought.** Under Secretary of Agriculture and Governor’s Certification disaster declarations, drought is an eligible declaration type. Therefore, small businesses and small agricultural cooperatives that have suffered economic injury as a direct result of drought are eligible for EIDL assistance under both types of declarations. As drought is not an eligible declaration type under a Presidential or Administrative declaration, physical disaster assistance is not available.

b. **Below Average Water Levels.** The Administrator may declare a disaster for below average water levels on the Great Lakes, or on any body of water that supports commerce by small business concerns.

NOTE: This includes, but is not limited to, lakes, rivers, creeks, channels, and other bodies of water that support small business concerns. It also includes bodies of water that border, but are not completely in, the United States, such as the Great Lakes (which share a border with Canada) or the Rio Grande River (which shares a border with Mexico).

c. **Nurseries.** SBA regulations define nurseries as 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. This type of business is a nursery farm and is an agricultural enterprise.
For purposes of EIDL eligibility, nurseries deriving less than 50 percent of annual receipts from the production of nursery or other agricultural products are not agricultural enterprises (see subparagraph 36 b.(5)).

(1) In SecAgs and Governor’s Certification declarations specifically for drought, nursery farms, wholesale nurseries, and retail nurseries are all eligible for EIDL assistance, by statute.

(2) In Presidential and Administrative declarations, nurseries (as defined by SBA) are not eligible for EIDL assistance because they are classified as agricultural enterprises. Wholesale and retail nurseries, that is, nurseries that do not produce or propagate the majority of the merchandise which they sell, are eligible except for the portion of their business activity, which deals with propagation.

d. Changes in Market or Commodity Prices. Changes in market or commodity prices, for whatever reasons, do not constitute a basis to find eligible economic injury.

e. Military Reservist EIDL (MREIDL).

(1) The intent of this program is to provide working capital assistance to small businesses that experience, or will experience, financial difficulties as a result of an essential employee being called up for active duty as a Reservist or member of the National Guard due to a period of military conflict. An essential employee is an individual (whether or not the owner of the small business) whose managerial or technical expertise is critical to the successful day-to-day operations of the applicant small business.

(2) Period of military conflict is (1) a period of war declared by Congress, or (2) a period of national emergency declared by Congress or the President, or (3) a period of contingency operation. A contingency operation is designated by the Secretary of Defense as an operation in which our military may become involved in military actions, operations, or hostilities (peacekeeping operations).

NOTE: A period of military conflict does not include instances when the Governor may activate the Guard as a result of a disaster event.

38. RESERVED

39. RESERVED
CHAPTER 5

ELIGIBILITY OF PROPERTY FOR PHYSICAL DISASTER LOANS

40. GENERAL ELIGIBILITY RULE (17)

Generally, property damaged or destroyed by a declared disaster is eligible. However, certain statutory, regulatory, and SOP restrictions and limitations apply. Individual disaster assistance offices and employees must not impose limits or restrictions not provided by statute, regulation, or this SOP.

41. LOCATION OF PROPERTY (18)

The applicant's property must have sustained damage while located within the geographic area identified in the disaster declaration.

a. Applicants whose primary residence is mobile such as a boat, motor home, or travel trailer are eligible if the residence was located within the declared area at the time of the disaster.

b. A traveler's personal property temporarily located in a declared area at the time of the disaster is eligible.

42. PRIMARY RESIDENCE ELIGIBILITY (19)

Although some applicants may have more than one residence, for SBA disaster loan eligibility purposes, an applicant can have only one primary residence (see limited exception at subparagraph 27.n.(2)).

a. Determination of a Primary Residence.

   (1) For either a homeowner or a renter, a damaged residence (e.g., house, apartment, condominium, manufactured home, etc.) is eligible only if it is the applicant's primary residence. A secondary residence (including contents located therein) is not eligible.

   (2) Generally, every applicant has only one primary residence. This becomes an eligibility issue when the applicant owns more than one piece of real property, or rents more than one apartment or home simultaneously.

For example, if an application indicates ownership of two residences, but one of them is clearly substantiated by Federal Income Tax Returns (FTR) as rental income property, no further inquiry is necessary to establish the other home as the primary residence. However, if you cannot readily determine which is the
applicant's primary residence consider the totality of circumstances including but not limited to the following factors.

(a) Filing by an applicant for homestead exemption or similar filing in those states that permit these filings. Similarly, in some tax jurisdictions, an applicant's home may be taxed at a preferred rate based on owner-occupancy status, which confirms primary residence status.

(b) Address used for voting purposes.

(c) Address used for identifying the school district to which children are assigned.

(d) Address used on FTR.

(e) Other similar factors.

b. Mixed-use Structures. When an owner of a mixed-use structure occupies a portion or unit as their primary residence, eligibility for damages is based on the following criteria.

(1) **Interior Living Space.** The Loss Verifier will address damages to the owner-occupied interior living space on the home assignment; and the damages to the business/rental interior living space on the business assignment:

The interior living space is defined as the sheetrock and within; this includes the wall and ceiling finishes, floor coverings, cabinets, electrical and plumbing fixtures and all permanent real estate improvements located within the living area space.

(2) **Basic Shell.** The structure’s predominant use will dictate where the basic shell damages will be verified. The Loss Verifier must comment on how the determination was made.

(a) If the owner-occupied portion of the structure is 50% or more of the structure’s overall square footage, the damages to the basic shell and owners’ interior living space will be verified on the applicant’s home application, while the business interior space will be verified on the business application.

(b) If the business/rental space is 50% or more of the overall square footage, the basic shell and interior space of the business/rental will be verified on the applicant’s business application, and the owners’ interior living space will be verified on the home application.
The basic shell is defined as the exterior, structural and common areas of the structure including exterior doors, windows, framing, sheathing, siding, electrical wiring, rough plumbing and any improvement located within the wall cavities, attic or crawlspace areas.

(3) If the property is totally destroyed or damage amounts approach the administrative limit, the total Fair Market Value (FMV) of the real estate should be fully assigned to the home loss verification only, with the LV commenting accordingly.

(4) Personal property losses or non-real property losses should be addressed in their respective case files.

c. **Primary Residence Located on a Farm.** A primary residence located on a farm is eligible. All home loan criteria apply to these applications (see paragraph 44).

43. **PRIVATE NONPROFIT ORGANIZATIONS**

(a) **Eligibility:** PNPs may be eligible under a Presidential (Individual Assistance (IA), or Public Assistance (PA)), Administrative, SecAg, Governor’s Certification 7(b)(2)(d), or Secretary of Commerce 308(b) declaration.

(1) PNPs of any size may be eligible for physical or EIDL assistance. PNPs are subject to applicable eligibility requirements in Chapter 3 and Chapter 4. Eligibility issues specific to homeowners’ associations and other property associations are addressed in Paragraphs 47 and 48 respectively.

(2) **Under Presidential PA declarations only.**

(a) A PNP facility that provides essential services of a governmental nature and is deemed *critical* may apply directly to FEMA to be considered for grant assistance for uninsured disaster-related damage to the facility. FEMA defines critical services as fire and emergency services, electric power, water supply and some irrigation, telephone communications, sewer and wastewater treatment, direct medical care, etc.

(b) A PNP facility which provides *noncritical* essential services of a governmental nature must first apply to SBA to be considered for a disaster loan for permanent repairs and/or replacement before it may seek FEMA grant assistance. If SBA determines the PNP noncritical facility is ineligible for a disaster loan, or the PNP has obtained the maximum amount for which SBA determines the facility is eligible, the PNP may...
then apply to FEMA for grant assistance for permanent repairs for its unmet disaster-related needs. For emergency repairs and debris removal, such PNPs may apply directly to FEMA.

FEMA defines non-critical services as museums, educational facilities, zoos, custodial care facilities, libraries, alcohol & drug rehabilitation centers, community centers, battered spouse programs, homeless shelters, low-income housing, shelter workshops, food programs for the needy, senior citizen centers, daycare centers for special needs, etc.

(c) Eligibility may be demonstrated by providing a copy of the tax-exempt FTR or equivalent document. A copy of the IRS or state ruling letter is not required.

NOTE: Churches generally qualify for exemption under Internal Revenue Code section 501(c)(3). Churches that qualify under this section are automatically considered tax-exempt and are not required to seek an exemption or file a tax return.

(b) Use standard business processing criteria for determining repayment ability and credit elsewhere.

(c) **Low Income Housing.**

Congress recognized that a private sector developer may not receive enough rental income from a low-income housing project to (1) cover the costs of developing and operating the project and (2) provide a return to the investors sufficient to attract the equity investment needed for development. Tax credits have been provided as a means to stimulate the development of new and rehabilitated rental housing for low-income housing.

Nonprofits play an important role in providing low-income housing and their ability to joint venture with for-profit concerns has increased the number of projects developed. This arrangement is generally accomplished by the creation of a partnership with the for-profit concern that is designated as the limited partner and 99-percent owner. This structure allows the private nonprofit the control of the project while providing the investors the tax benefits related to the tax credits. The agreements generally provide that the limited partners have no obligation for operating or capital costs after their initial investment, and require the general partner make up any operating deficits.

The limited partnership and its general partner (private nonprofit entity) operating the low-income housing project shall be designated as the SBA disaster loan applicant, provided that it is organized and operating in accordance with Section 42 of the Internal Revenue Code.

In determining repayment ability and credit elsewhere, only the tax and financial information on the limited partnership and the general partner shall be considered. (Often the limited partnership and the general partner may not have repayment ability because any cash flow that
could be used for SBA loan payments would come from the operating budget that must provide low-income housing. Further, every dollar of debt service would have to be offset with rent increases or grants from other government programs or private donations).

44. AGRICULTURAL PROPERTY ELIGIBILITY (21)

Agricultural property is not eligible (see subparagraph 55 h.). However, the applicant's primary residence, personal property contained therein, and access road to the residence are eligible under home loan criteria.

45. REPAIR OR REPLACEMENT COST ELIGIBILITY FOR STRUCTURES (22)

The purpose of physical disaster loans is to return the victim's property as nearly as possible to its predisaster condition (within statutory, regulatory, and policy limitations described in this SOP). Generally, the dollar eligibility for structures is the cost to repair or replace the underinsured or uncompensated damage.

a. Types of Structures. Generally, all structures and buildings are eligible. For home loans, non-dwelling structures such as garages, storage sheds, guest houses, etc., whether attached or detached, are eligible (see limitations in paragraphs 50 and 56). Similarly, for business loans, most structures and outbuildings are eligible unless specifically limited.

b. Types of Repair or Replacement Costs. Costs associated with repair or replacement of disaster damaged structures are either direct or indirect. The Field Inspector is responsible for determining these costs.

   (1) Direct Costs. In addition to the actual costs to physically repair the property, there may be other direct costs associated with rebuilding such as code required upgrades.

   (2) Indirect Costs and Expenses. Certain other costs and expenses associated with repairing or replacing structures are eligible. Often these were not known to the Field Inspector at the time of the original site inspection and were not included in the Loss Verification report. Examples of indirect costs include (but are not limited to): engineering fees, survey costs, architectural fees, initial insurance premiums, etc. If known at the time of processing, you may include these expenses in the loan amount. If discovered after loan approval, you may increase the loan. You must consult with the appropriate department (i.e., Loss Verification or Legal) before including any indirect costs in the loan amount.

c. Costs in Excess of Predisaster FMV. The Applications Director or designee must approve business/EIDL loans if the allocation to repair or replace disaster damaged real property exceeds the Field Inspector’s estimate of predisaster FMV.
d. National Register of Historic Places. You must seek supervisory guidance regarding construction guidelines, zoning, or other considerations prior to processing buildings or structures included in or eligible for the National Register of Historic Places.

e. Special Provisions Applicable to Rental or Investment Properties. If the predisaster FMV of a rental or investment property (not owner-occupied residences or commercial real estate occupied by the owning business or an affiliate) is depressed because of factors other than the disaster itself (e.g., substantial deferred maintenance), eligibility cannot exceed the predisaster FMV. This restriction avoids providing subsidized disaster funds on favorable terms to owners who have not adequately maintained their property. It also accounts for otherwise depressed economies and real estate markets. This exception applies regardless of whether the owner intends to repair, replace, or relocate. (Owner-funded upgrades or improvements are permitted.)

f. Deferred Maintenance. The Field Inspector will address deferred maintenance during the on-site inspection. Minor deferred maintenance which must be dealt with in order to make disaster repairs is eligible. However, other deferred maintenance is not eligible. You must rely upon the Field Inspector’s report when establishing eligibility in these cases.

46. MANUFACTURED HOUSING (MH) ELIGIBILITY (23)

a. Use of Manufactured Housing.

(1) MH used as the applicant's primary residence is processed under home loan criteria.

(2) MH held for resale is inventory and processed under business loan criteria.

(3) MH used for rental income purposes is processed under business loan criteria.

(4) MH used for any other purpose(s) may be eligible depending on the specific use. For example, a manufactured home used by a construction company as its on-site office would be eligible because of its usage. MH used for vacation or recreational purposes would not be eligible.

b. Eligibility of Totally Destroyed MH. The Field Inspector will assign a replacement cost based upon square footage when a MH is totally destroyed.

c. Eligibility Documentation.

(1) Ownership Documentation.
(a) We require a copy of the title to the damaged MH or the equivalent legal documentation to establish proof of ownership (consult the Chief Legal Advisor or designee for state specific requirements).

(i) When taking the damaged MH as collateral, no other proof of ownership is acceptable.

(ii) When not taking the damaged MH as collateral (e.g., the loan is unsecured or the damaged MH is totaled and only the replacement will be taken), you may establish ownership using the criteria listed in subparagraph 80(b).

(b) MH may come in multiple widths (double-wide/triple-wide) with separate titles or the equivalent for each section. In these cases, SBA will require the documentation for each section.

(c) If the MH is permanently attached to the land it may or may not be titled. When a MH has been permanently attached to the land evidence must be submitted to reflect affixation.

(2) Other Documentation Requirements for Secured Loans.

(a) We require a legible copy of the lease if the damaged MH is/was located on leased land. If no lease exists, a letter from the landlord confirming the location at the time of the disaster will suffice.

(b) We require a copy of the deed if the damaged MH is/was located on land owned by the applicant.

(c) A landlord’s waiver is not required when the owner of the MH is not the owner of the land where the MH is located.

47. CONDOMINIUM ELIGIBILITY (INDIVIDUAL UNITS AND CONDOMINIUM ASSOCIATIONS) (24)

Condominiums present unique issues which require different methods for establishing property eligibility and special provisions and considerations during processing. Any application where the damaged property is a condominium (individual unit or association-owned or common areas) should be identified and handled separately from the onset.

a. Distinguishing Individual Unit Owners from the Association. Chief Legal Advisor or designee must review all pertinent documents, including the association's Conditions, Covenants, and Restrictions (CC&Rs), Articles of Association, and applicable State or local laws to ascertain the rights and responsibilities of the condominium association and individual unit owners.
b. Individual unit owners are eligible for the damages to their own units, subject to the association’s governing documents and state law. The loan classification (home or business) depends on whether the unit is owner-occupied as a primary residence or whether it is used for business purposes (such as a rental). Unit owners may be eligible for refinancing subject to the provisions in paragraph 59. Units classified as secondary homes are ineligible.

NOTE: Because of the potential overlap of the individual unit owners' damage with that of the association-owned portions of the property (e.g., interior/exterior wall, interior ceiling/exterior roof), you should have an understanding of how the entire condominium complex will be repaired or replaced and who is responsible for repairs. This is defined in the association’s governing documents and state law.

c. General Eligibility Rule.

The borrower may have eligibility for personal property, unit repairs, and a share of any assessment for repairs to common areas. When we process loans to individual unit owners before the association determines how it will fund repairs to the common area, we will fund the borrower's personal property and unit repairs. In these cases, you must include a condition in the individual unit owner’s LAA requiring certification that the unit owner’s repairs will not be damaged or destroyed by the Association’s subsequent repairs.

(1) When the loss verification report indicates the individual units can be made habitable with only minor interior repairs, proceed with processing these individual unit owner loans for personal property and eligible unit repairs.

(2) If major interior and exterior repairs are necessary and individual units cannot be made habitable without the association being involved in the rehabilitation process, individual unit owners generally cannot be considered for anything other than personal property eligibility until the association meets and agrees on a formal course of action.

(3) If the association chooses not to apply for an SBA loan and instead passes a one-time assessment to unit owners equal to the amount necessary to make common area repairs, the unit owners are eligible for their pro-rata shares of the amount of the assessment as well as for the interior damages to their individual units and personal property (PP), subject to program lending limits. To validate the assessment:

(a) The unit owner must provide a copy of the Assessment Resolution to substantiate that amount of the assessment to cover the disaster-related damage to the common areas, and/or
(b) The PDC Loss Verification Department, will determine if the documentation is sufficient to include in the verified loss or if an on-site inspection is necessary.

(4) When an association has suffered substantial damage and has voted not to rebuild, the unit owners are forced to relocate. In such cases, SBA considers this relocation to be mandatory.

(a) The unit owner is eligible for the replacement value of their personal property, their unit, and their proportionate share of the condominium's common assets, such as buildings, amenities, etc., as determined by the Loss Verifier, minus any insurance recovery received.

(b) As the unit owner also has a proportionate share of the association’s master insurance policy, the Loan Officer must address the potential for duplication of benefits (DOB) by requiring an assignment of the Borrower’s interest under the Homeowners Association’s Master Insurance Policy executed jointly by the Borrower and the Association.

(c) As the unit owner has a proportionate share of the condominium’s common assets, the Loan Officer must address the potential for DOB from the sale of the condominium complex. SBA will require an assignment of the Borrower’s interest in any proceeds of the sale of the damaged property.

d. The Association. The condominium association is generally eligible to apply for damages to the areas the association is responsible to repair (such as hallways, parking areas, sidewalks, driveways, grounds, pools, etc.), as described in the association’s governing documents and state law.

(1) We classify applications from condominium associations as business loans (usually as nonprofit organizations), unless specified otherwise by their articles of association. We require the following documentation to process an association's application:

(a) A complete copy of the CC&Rs and/or Master Deed;

(b) A complete copy of the by-laws and/or articles of association;

(c) A copy of the resolution duly authorizing the association to apply for an SBA loan;

(d) A complete list of names, addresses, and telephone numbers of unit owners and directors;
(e) A copy of the Federal tax returns (if required) or annual reports and operating budgets for the past three years; and

(f) A copy of the master insurance policy.

(2) Prior to disbursement of any SBA loan funds, the association must inject any net insurance proceeds or any other funds necessary to complete the repairs.

(3) Generally, the Loan Officer should base the monthly installment amount on a minimum of $25 per unit owner. Any amount less than $25 needs proper justification.

e. Collateral Requirements.

(1) Individual unit owners are subject to the same collateral requirements as any other physical disaster loan recipient.

(2) The Association. Generally, we secure loans to associations by taking both of the following:

   (a) A mortgage or deed of trust on the common areas owned by the association, as permitted by law; and

   (b) An assignment of a special assessment passed by the association in accordance with its by-laws, unless prohibited by law. (The association must assess each unit owner in an amount sufficient to provide loan repayment.)

   NOTE: Generally, for any owner with 20 percent or more ownership, you should require the guarantee of the owners.

f. Special Provision for Calculating Eligibility for Unit Owner’s Refinancing. Individual unit owners are eligible for refinancing. For the substantial damage calculation, the market value or replacement value of an individual condominium unit is not limited to the value of the internal space of the particular unit. It includes the proportional share of the condominium's common assets, such as buildings, amenities, etc. This calculation must reflect the individual unit owner's proportional share of any net recovery under the condominium association's master insurance policy (see subparagraph 59 h.).

g. Time-Share Eligibility: Individual time-share unit owners are not eligible for SBA disaster assistance. The HOA governing the time-shared property is eligible.

48. OTHER ASSOCIATION ELIGIBILITY (25)
Other associations include, but are not limited to, Planned Unit Developments (PUDs), Cooperative Associations (Co-ops), Road Associations, Water Associations, etc. Chief Legal Advisor or designee should review applications from other types of associations to assist you in determining who the eligible parties are, and, in Presidential declarations, the best course of action to pursue for assistance.

a. **Basic Eligibility Considerations.** Eligibility rests with those who owned the damaged or destroyed property at the time of the disaster.

(1) **Formal (legal) Association Exists.** If a legal entity owns the damaged property, the entity is the eligible applicant (e.g., The Happy Valley Water Well Association, Inc.). You process the application in the same manner as a condominium association.

(2) **Formal (legal) Association Does Not Exist.** Property owners who share legal responsibility for repair with one or more other property owners, but had not formed an association at the time of the disaster, may apply as individuals; or they may elect to form an association in accordance with State law and apply as an association, even though the legal formalities are not yet complete.

(a) For applications as individuals:

(i) Use a home loan application when the shared responsibility for repair is related to the applicant's primary residence;

(ii) Use a business loan application when the shared responsibility for repair is related to the applicant's business or rental property;

(iii) Prior to approval, all applicants with common responsibility must have fixed the liability proportionally among those legally responsible for the cost of the repairs, by contract or some other legally enforceable method; and

(iv) A list of names and addresses of all who share in the responsibility for repairs should accompany the application.

(v) **If the total project costs to complete all repairs exceeds the SBA loan amount a stipulation should be added to the loan to cover the shortfall.**

(b) For applications as an association formed after the disaster:

(i) The newly created association must complete its legal formalities prior to loan approval; and
(ii) A list of names and addresses of all members must accompany the application.

b. **Eligibility for Common Road Damage.** SBA eligibility and the handling of applications to repair common road damage will depend on the disaster declaration.

   (1) In *Administrative declarations* SBA is generally the only form of assistance available to repair common road damage.

   (2) In *Presidential declarations* applicants should first be referred to FEMA or other appropriate agencies.

49. **LAND ELIGIBILITY** (26)

a. **Land Associated with a Primary Residence or Business Operation.** Damages to land and soil are eligible. Most damage of this type is caused by flooding or other forms of moving water. Soil washouts and similar damages caused by excessive rainfall and flooding are eligible provided the cause is a direct result of the specific declared disaster. However, erosion or similar damage is not eligible, because it occurs over time and is not the direct result of any single declared disaster event. We limit eligibility to the cost of restoring the land to its predisaster condition (for exception regarding necessary protective devices, see paragraph 63).

   (1) If you determine land damage caused by a specific disaster is eligible, you must consider the potential for recurring or continuing damage. You may approve funds to restore land damage if:

      (a) A shoreline or waterway boundary is stable to the point that future water damage is not likely to occur as the result of high tides, wind-driven water, wave action, or stream flows which might reasonably be expected but which would not constitute a new disaster declaration; or

      (b) The victim has used other resources to fund the installation of protective devices which will prevent expected high tides, wind-driven water or wave action, or stream flows from causing further land damage. In some cases, the cost of protective devices is eligible, as provided in paragraph 63.

   (2) Damage to land improvements is eligible unless specifically excluded or subject to the landscaping limitations described in paragraph 50. Some examples of eligible land improvements are: paving, walkways, driveways, fences, retaining walls, seawalls, septic systems, drainage systems, culverts, and various protective devices.

b. **Unimproved Land.**
(1) **General Rule.** Unimproved land is not eligible for disaster loan assistance. This includes land held for speculation, investment, or future development.

(2) **Exceptions to the General Rule.**

(a) **Home Loans.** The usual test of an eligible primary residence is occupancy, but an owner of a lot (generally not larger than an acre unless required by zoning laws) may be eligible for a home loan depending on the circumstances. For example:

(i) A lot owner may be a renter residing nearby and actively engaged in the construction of a residence at the time of the disaster loss. The residence may already be under construction; or the landowner may have already incurred expenses for plans, obtained the necessary permits, or engaged a contractor to commence construction. If the disaster loss is to the property where the owner was currently and actively in the process of establishing permanent residence and where the applicant has no other permanent residence (as would be the case for a renter in this example), the property is eligible.

(ii) The same result might occur when the lot owner previously lived and was employed elsewhere, recently was transferred, and purchased a lot and has taken steps to initiate the construction process, and has begun selling the previous residence or converting it to business property.

(b) **Business Loans.** Ownership of unimproved land actually used in the operations of a business concern rather than land held for investment, speculation or future development purposes may be eligible. For example:

(i) A business whose established activity is buying and selling unimproved land or developing it for resale or rent (a developer) may own unimproved land. Since this activity is an integral part of normal business operations, damage to unimproved land is eligible. Usually, a business concern engaged in an activity involving ownership of unimproved land is readily distinguishable from an individual or group holding ownership of land for other purposes.

(ii) A business may own an unimproved lot on which construction of a new facility is underway. Evidence of the building process includes building permits, architect's plans, engineering studies, or other preliminary steps.

50. **LANDSCAPING ELIGIBILITY** (27)
a. **Definition.** As used in this paragraph "landscaping" includes the replacement of trees, shrubs, hedges, sod, private swimming pools, and private tennis courts (and items or structures associated with their use, such as a cabana used as a bath house). Docks, boat houses, and any related facilities generally used for recreational purposes are also subject to the landscaping limits.

b. **General Rule.** Eligibility for disaster damaged landscaping is limited to the lesser of the verified loss to landscaping or $5,000. This limitation applies to both residential and commercial property. Normally, trees, shrubs, hedges, etc., will be replaced with saplings or young bushes and shrubs. There will seldom be any justification for using mature plantings as replacements.

**Exceptions to the General Rule.**

1. The limit does not apply to docks and other related facilities when water transportation to and from the primary residence is necessary.

2. Detached buildings such as garages, storage sheds, guest houses, etc., which are not predominantly used for recreational purposes are normally eligible, together with the main house itself, subject to the administrative limit.

3. **Business applicants** whose disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business are not subject to landscape limits. For example:

   a. A row of trees that constituted a windbreak;

   b. The plantings in an atrium or solarium used by patients in a facility providing medical care for the public; or

   c. Swimming pools, tennis courts, squash courts, handball courts, etc., when the damaged facility constitutes an integral part of the plan to attract business (e.g., hotel, motel, resort, etc.).

4. **Other Exceptions.** The following are not included in the landscaping limits:

   a. Fill for disaster washouts (as opposed to long-term erosion from natural causes) that must be replaced and is part of the damage to land;

   b. The cost of clearing downed trees, shrubs, hedges, etc. (if not done by the community, Corps of Engineers, etc., as part of the total disaster cleanup); and

   c. Minimal ground cover (if the most practical and feasible method for necessary ground stabilization).
51. **VEHICLE ELIGIBILITY** (28)

a. **Definitions.**

(1) *Vehicle* means any automobile, truck, tractor-trailer, van, mini-van, motorbike, motorcycle, or other form of motorized ground transportation.

(2) *Recreational Vehicle (RV)* means any motor home, camper, truck, van, motorbike, motorcycle, all-terrain vehicle, or any other form of transportation used primarily for recreation or relaxation.

d. **Exceptions to the General Rule.**

(1) **Unlicensed Vehicles.** An unlicensed vehicle may be eligible as follows:

(a) Where limited or special use does not require licensing (e.g., a bus used to shuttle workers exclusively within the confines of a plant or job site; or a vehicle used exclusively on an Indian reservation for commuting);

(b) Where the vehicle(s) are inventory of a business applicant; or

(c) Where the vehicle was held for its scrap value.

(2) **Recreational Vehicles.**

(a) A recreational vehicle, such as a *boat*, motor home or a camper, may be considered eligible for home loan assistance if it is the applicant's primary residence.

(b) A recreational vehicle, such as a boat or a snowmobile, may be considered eligible for home loan assistance (as personal property) if it is the applicant's only method of accessing their primary residence.

(c) Recreational vehicles may be considered eligible for business loan assistance (as machinery and equipment) if:
(i) All expenses connected with the operation of the vehicle, including depreciation and maintenance costs, are deducted as business expenses on the FTR, or

(ii) The vehicle(s) qualify as inventory of a wholesale or retail business concern.

52. VESSEL AND AIRCRAFT ELIGIBILITY  (29)

This paragraph addresses eligibility of commercial boats, ships, vessels, and aircraft. All other noncommercial and recreational crafts are either not eligible or subject to limits in paragraph 51.

a. General Rule. Subject to the provisions of this paragraph, commercial vessels and aircraft are generally eligible under business loan criteria if they were licensed by the proper authority for commercial use at the time of the disaster.

Exception: Non-functioning vessels and aircraft held solely for display purposes, training, or as parts inventory may not require licensing.

b. Vessel. A vessel must be properly registered in the state where it is operated and utilized in a commercial activity at the time of the disaster. If the state registration does not identify the authorized use of the vessel, you must use other verification such as tax returns, receipts for sale of the catch, etc. If the vessel is documented with the U.S. Coast Guard, the authorized use is listed on the documentation papers.

c. Aircraft. An aircraft must be properly registered (licensed) with the Federal Aviation Administration (FAA), have a current and valid "Certification of Airworthiness" (issued by the FAA), and be utilized in a commercial activity at the time of the disaster. In all cases, the FAA will identify the authorized use of the aircraft.

53. HOME LOAN PERSONAL PROPERTY (PP) ELIGIBILITY  (30)

a. General Rule. Eligibility for PP losses rests with the individual(s) who owned the damaged or lost property at the time of the disaster. Generally, no upgrading is permitted.

b. Definitions.

(1) Personal Property (PP). For disaster home loan purposes, PP means ordinary household contents, such as furniture, appliances, clothing, etc., including eligible vehicles, which the applicants would normally take if they moved.

(2) Household. For disaster loan purposes, a household is defined as all persons residing in the dwelling who are claimed as dependents on the applicant's FTR.
For example, college students living full time in their parents' home do not have separate eligibility for losses to their PP if they are dependents on their parents' FTR. However, if students living full time with their parents are not claimed as dependents on their parents' FTR, they have eligibility similar to unrelated tenants. The Field Inspector must determine that there is no duplication of PP eligibility within the household.

c. **Limitations.** Nonessential or atypical items (e.g., extraordinarily expensive, irreplaceable or luxury items, or uncommonly large quantities of ordinary items) may have limited eligibility based on functional or ordinary value or quantity. The Field Inspector makes these determinations and applies appropriate limitations.

(1) **Functional Value.** For very expensive or luxury items with functional use, eligibility is limited to the cost of an ordinary item meeting the same functional purpose. For example, a fur coat would be replaced with a cloth coat.

(2) **Quantities.** For very large quantities of ordinary items, eligibility is limited to the replacement cost of ordinary quantities.

(3) **Items with Limited Eligibility.** Items with limited eligibility include, but are not limited to:

(a) Antiques;

(b) Expensive or extensive wardrobes or clothing collections, including furs (Items essential to the applicant's occupation, such as actor or model, are not subject to this limitation);

(c) Expensive or extensive wardrobes or clothing collections, including furs (Items essential to the applicant's occupation, such as actor or model, are not subject to this limitation);

(d) Collections of otherwise commonplace items (books; musical equipment, tapes, or compact discs; audio or visual equipment or tapes; sports equipment, guns; etc.). Items essential to an applicant's occupation (attorney, writer, photographer), are not subject to this limitation (see paragraph 54);

(e) Alcoholic beverages (Amounts above $250 per application must be substantiated and documented).

(f) Disaster-related moving and storage expenses for homeowners are eligible. For example, a person recognizes (or is told by local emergency management officials) that their home is going to be flooded, and in an effort to lessen their disaster-related losses they move and store personal property items out of harm’s way. The home is flooded and the victim subsequently moves their personal property back to the disaster repaired property. In this scenario, the moving and storage expenses would be
eligible. However, if the home was not damaged as a result of the disaster, moving and storage expenses would not have eligibility. Moving and storage expenses are also eligible in mandatory relocation situations.

Allowances above $3,000 must be substantiated and documented.

d. Ineligible Personal Property. Some PP items are ineligible. Examples include, but are not limited to:

(1) Cash, including coin collections; lottery tickets; stocks; bonds; and other negotiable instruments;

(2) Recreational vehicles not included in paragraph 51 d.(2);

(3) Pets and other animals; and

(4) Hobby items which have little or no functional value, such as stamp collections, butterfly collections, autograph collections, etc.

54. BUSINESS CONTENTS ELIGIBILITY (31)

Eligibility for business contents rests with the person or legal entity who owned the damaged or lost property at the time of the disaster. (See possible exceptions in subparagraph 27 k.). For disaster loan purposes, business contents means any machinery and equipment (M&E), inventory, furniture and fixtures (FF), or office equipment damaged or destroyed by the disaster. Replacement of business contents must be, to the extent possible, of the same quality and capacity as the property lost (no upgrading is permitted).

a. Disaster-related moving and storage expenses for businesses may be eligible. For example, a business owner recognizes (or is told by local emergency management officials) that their business is going to be flooded, and in an effort to lessen their disaster-related losses they move and store business contents out of harm’s way. The business is flooded and the victim subsequently moves the contents back to the disaster repaired property. In this scenario, the moving and storage expenses would be eligible. However, if the business was not damaged as a result of the disaster, moving and storage expenses would not have eligibility.

Moving and storage expenses are also eligible in mandatory relocation situations.

Allowances above $5,000 must be substantiated and documented.

55. INELIGIBLE PROPERTY (32)
The following property is not eligible for disaster loan assistance.

a. **Condemned Structures.** Any structure, residential or commercial, condemned or refused an occupancy permit by the proper authority before the disaster occurred.

b. **Secondary Homes.** Secondary homes such as vacation homes, cabins, cottages, chalets, and their contents, which are used for leisure and enjoyment by the owner.

c. Any building and its contents, including a boat house, located seaward of mean high tide or entirely in, on, or over water without an established business need, and which was constructed or substantially improved after February 9, 1989, is not eligible. A structure other than a building, such as a dock, or pier is eligible for SBA assistance, but is subject to the landscaping limits defined in paragraph. 50.

d. **Publicly Owned Property.** Public roads, highways, bridges, municipal buildings, etc.

e. **Property Not Located Within the Disaster Area.** Any property not located within the declared disaster area at the time of the disaster.

f. **Coastal Barrier Islands.** The Coastal Barrier Islands Resources Act prohibits financial assistance for any purpose within the Coastal Barrier Resources Systems (CBRS). The only loans permitted are for PP of transients or short term tenants (e.g., vacationers).

g. **Seasonal Occupancy on Leased Land.**

(1) **General Rule.** Lessees who are only permitted to occupy their dwellings on a seasonal or recreational basis are ineligible. This also applies to MH situated on leased land and vessels moored in a leased slip where the lease does not permit occupancy as a full-time primary residence.

(2) An exception occurs when the lessor acknowledges in writing that:

(a) The lessee was not in compliance with the lease provision for only seasonal or recreational occupancy prior to the disaster; and

(b) The lessor had chosen not to enforce the lease restriction; and

(c) The lessee is and will be permitted to continue to occupy the dwelling, MH, or vessel as a permanent, year round primary residence.

(3) Approval under this exception requires:

(a) Disaster-specific authorization from AA/DA.

(b) Final action by the Applications Director or higher.
h. **Agricultural Enterprises.**

(1) Businesses primarily engaged in agriculture are not eligible (see paragraph 29 g.). However, a business may be primarily an agricultural enterprise, but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc. Disaster loan proceeds may not be used to repair or replace physical agricultural losses.

(2) A business which is primarily engaged in an eligible activity and secondarily engaged in an agricultural enterprise is prohibited by regulation from using disaster loan proceeds to repair/replace physical agricultural losses.

(3) As used in (1) and (2) above, the business includes the applicant business and its affiliates.

i. **Nurseries.** Nursery farms are not eligible (see subparagraph 27 m. for physical loans and subparagraph 37 c. for EIDL).

j. **Property Located in an SFHA within a "Nonparticipating" Community or a Community "Under Sanction."** Small Business Administration funds may not be used to repair or replace real or personal property located in an SFHA within a nonparticipating community or a community under sanction. In these communities, Federal flood insurance is unavailable and borrowers cannot purchase the statutorily required flood insurance. However, relocation assistance is available. *(See exception in paragraph 107 g. (2).)*

k. **Property Covered by Notice of Disqualification.**

(1) If a notice of disqualification of flood-prone property was previously filed of public record, the property is ineligible. However, the AA/DA, CD/PDC or their designee may remove the ineligibility upon notice from the Flood Insurance Administration (FIA) of the following:

   (a) Adequate flood control measures have been completed and the property is no longer flood-prone; or

   (b) Property improvements on the land were constructed after the community started participating in the FIA flood insurance program and both layers of flood insurance may be purchased.

(2) If the ineligibility is removed, the Accounts Director or designee may issue to the present property owner an instrument canceling the original recorded notice of
disqualification. This instrument becomes effective when recorded in the local land records office where the recorded notice of disqualification was filed.

(3) Notices of disqualification covering property located within other identified hazard areas may be similarly treated (see subparagraph 107 a.(4)).

56. **LIMITED-USE ELIGIBILITY** (33)

If an otherwise eligible structure (primary residence or commercial building) was utilized for purposes other than its intended or customary use, we limit eligibility to the lesser of the current or intended use. Thus, if the structure was excessive in size or quality for the use it had at the time of the disaster, it will be restored only to the current use. For example, a cottage or house appurtenant to a primary home was being used for storage purposes. Loan eligibility to repair that structure is limited to the lesser of the cost of a similar sized storage unit or its intended use as a cottage.

57. RESERVED

58. RESERVED
CHAPTER 6

ADDITIONAL ELIGIBILITY: REFINANCING, RELOCATION, MITIGATION

59. REFINANCING (36)

Refinancing is available to help create repayment ability. When a property is substantially damaged, refinancing of recorded liens can make the additional disaster debt more affordable.

a. General Rule. By statute, all or part of all loans secured by recorded liens on homes or business concerns substantially damaged by the disaster may be refinanced with additional disaster loan proceeds.

   (1) Home Loans. We can only consider the eligible RE (primary residence of the applicant, including MH, individual condominium units, and houseboats) for refinancing.

   (2) Business Loans. We can only consider the eligible RE and/or M&E which is essential to the operation of the business for refinancing. Property used by the applicant business in a manner which is analogous to M&E is treated similarly for this purpose (e.g., furniture, carpets, drapes, linens, appliances, etc., in a hotel or motel).

   (3) Nonprofit Organizations. Nonprofit organizations are not eligible for refinancing because they do not meet the definition of a business concern as defined in 13 CFR §121.105. The Small Business Act limits eligibility for refinancing to homes and businesses.

b. Definitions.

   (1) Uncompensated Damage means SBA’s verified physical loss to the property in question (regardless of legislative or administrative limits) as determined by the Loss Verifier less any insurance or other recoveries and excluding any funds due to contractor malfeasance.

   (2) Fair Market Value (FMV) is based upon local market conditions and is what the property would sell for one day before the disaster occurred.

   (3) Replacement Cost means the cost to completely reconstruct the damaged structure and restore the entire property to its predisaster condition.

   (4) Substantially Damaged means uninsured or otherwise uncompensated damage of either:
(a) For homes: uninsured or uncompensated damage, which at the time of the disaster, is either:

(i) 40 percent or more of the home's predisaster fair market value (FMV) or replacement cost including the value of any land, whichever is less; or

(ii) 50 percent or more of the structure's predisaster fair market value or replacement cost, excluding the value of any land whichever is less.

(b) For businesses: uninsured or uncompensated damage which, at the time of the disaster, is either:

(i) 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 the value of any land) and damaged machinery and equipment; or

(ii) 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 the value of any land) and damaged machinery and equipment.

(c) While it may be helpful in verifying the losses, loss documentation by local authorities is not required by SBA to make the substantial damage determination.

c. Applicant Eligibility Requirements for Refinancing. By statute, applicants must meet three requirements to be eligible for refinancing consideration:

(1) The applicant's property must be substantially damaged;

(2) The applicant must not have credit available elsewhere; and

(3) The applicant must repair or replace the damaged property.

d. Liens Eligible for Refinancing. Liens subject to refinancing must have existed prior to the disaster. The actual position (i.e., first, second, etc.) and original purpose of an otherwise eligible lien has no effect on refinancing eligibility.

(1) For real property in both home and business loans, only debts secured by a recorded mortgage, deed of trust, or similar instrument are eligible.

(2) For M&E in business loans, only debts secured by a recorded security instrument are eligible. For blanket liens where you cannot distinguish which portion of the
lien relates to M&E, refinancing may be offered if all other relevant criteria are met.

e. **Liens Not Eligible for Refinancing.**

(1) Any mortgage or other lien owned by a Federal, State, or local government agency.

NOTE: Liens are eligible when the private debt is insured or guaranteed by a Federal agency (provided the private lender owns the debt and it has not been repurchased or otherwise assumed by the Federal agency). We do not consider the Federal Deposit Insurance Corporation (FDIC) Federal agencies for this purpose. An SBA guaranteed debt is eligible for refinancing as long as the debt has not been repurchased or is not owned by SBA. In addition, state housing finance authorities which, pursuant to Federal law, fund such mortgages or liens by issuing Federal tax exempt mortgage bonds for the purpose of encouraging home ownership for low and moderate income families, are not considered a state agency for this purpose.

(2) Liens due to unpaid taxes, mechanics liens, or similar attachments.

(3) Liens on business inventory (payments on liens on inventory may be appropriately addressed with EIDL assistance).

f. **Interim/Bridge Loans.** We do not consider repayment of these loans refinancing.

g. **Amounts and Dollar Limitations of Refinancing.** By statute, refinancing eligibility must not exceed:

(1) **Homes.** The lesser of the amount owing at the time of the disaster on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the RE.

(2) **Businesses.** The lesser of the amount owing at the time of the disaster on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the RE and M&E.

h. **Calculation of Substantial Damage.** Your initial calculation is based upon figures in the Loss Verification Report. You may need to adjust these figures for insurance or other recoveries. Adjustments may also be necessary because the Loss Verification Report may not reflect the fair market values of all of the applicant's property, which may include undamaged property as well.
(1) **Components of Final Calculation (Homes).** You must not include any property adjacent to the damaged primary residence in the calculation if the other property has a separate deed.

(2) **Business Loans.** The determination of substantial damage pertains to the applicant business, not just to the damaged property. You must consider each business applicant as a single entity. Do not aggregate with its affiliates for this purpose.

(a) **Exception for Sole Proprietors (Including Multiple Rental Properties).** If one of the ventures or locations sustained substantial damage, but the others suffered little or no damage, you can establish eligibility for refinancing for the damaged ventures or locations if any of the following conditions apply:

(i) The individual property is listed on a single mortgage or deed of trust and sustained the percentage of damage necessary to establish eligibility individually; or

(ii) If the aggregate damage to multiple properties satisfies the percentage requirement for refinancing for all the properties if they were taken as a group, then you should take them as a group. This could make an individual property (on a single mortgage or deed of trust) eligible for refinancing even though the property, standing alone, did not suffer sufficient damage; or

(iii) If a single mortgage or deed of trust covers more than one of the properties, you must consider the damaged properties covered by the mortgage or deed of trust as a group, rather than individually. The damage for the group must meet the required percentage; or

(iv) When the business premises are within the home of the sole proprietor, you must aggregate the business and home damage to determine if the required percentage is met.

(b) **Partnerships and Corporations** are distinct legal entities. When determining substantial damage, do not aggregate property owned by either the principals of the entity or any of its affiliates. However, you must aggregate all property(s) (Real Estate and M&E, whether damaged or not) owned by the applicant partnership or corporation to arrive at the denominator. You include only the uninsured damage to the property in the numerator.

(c) **Machinery and Equipment Damage Only.** If the uninsured damage is only to M&E, the calculation must include the value of all business Real Estate owned.
(3) **Effect of Code Requirements on Substantial Damage Calculation.**

(a) **General Rule.** If the applicant is *repairing* the damaged property, you should include the cost of code-required upgrading as part of the damage when you calculate eligibility for refinancing; that is, the substantial damage calculation would include the eligible physical loss to the RE plus the cost to comply with code requirements. This provision applies to all code-required upgrades, regardless of what caused the damage. If the applicant is *relocating*, you do not include the cost of the code requirements as part of the damage when you calculate refinancing eligibility.

(b) **Exception to the General Rule.** The Applications Director or higher must approve this exception. Use the higher of the costs (actual loss less insurance and other recoveries plus code-required upgrades as compared to replacement cost (relocation property) less insurance and any other recoveries) in the numerator of the substantial damage calculation if:

(i) The general rule above would result in reduced or no eligibility for refinancing; and

(ii) The loan request would be declined for lack of repayment ability; and

(iii) The applicant plans to relocate from an SFHA to a non-SFHA instead of rebuilding at the damaged site.

(4) **Insurance recoveries** must be deducted in determining uncompensated damage. Therefore, you should not offer refinancing until an applicant's insurance recovery is finalized.

(5) Other recoveries (e.g., CDBG grants) must also be deducted in determining uncompensated damage only if the refinancing funds have not been disbursed. If the refinancing portion of the SBA disaster loan has been fully disbursed, SBA is not obligated to recalculate the homeowner’s refinancing eligibility.

(6) **Applicants Request (or Need) for Reduced Physical Loan Amount.**

(a) If the uncompensated loss meets or exceeds the substantial damage criteria, but the applicant, through other means, completes the repairs for less than that amount, you must use the uncompensated loss as the basis for calculating substantial damage. This includes situations where the applicant does the actual work or acts as the general contractor, etc.
(i) If the difference between the Loss Verification Report and the actual cost is large, or cannot reasonably be explained, you should consult with Loss Verification about the discrepancy.

(ii) If we determine the verification to be inaccurate such that the loss does not meet the substantial damage criteria, and the refinancing funds are not disbursed, the Accounts Director or designee must review the case to determine further action.

(b) When the applicant elects not to repair or replace all the damage:

(i) If we know this at the outset (not considering its impact on collateral at this time), there may be no eligibility for refinancing because the damage to be repaired may be less than substantial. The law requires that the property must be substantially damaged and repaired or replaced.

(ii) If we do not know this in advance, the mandatory paragraphs in the LAA requiring the return of refinancing proceeds take effect.

i. Authorized Refinancing.

(1) For home loans, you can authorize refinancing subject to the following conditions:

(a) If the disaster loan without refinancing will amortize in 15 years or less, the Applicant is not eligible for refinancing.

(b) If the disaster loan will amortize in more than 15 years, you may offer refinancing. The payment on the disaster loan, which includes refinancing, should be at least the same as the existing payment being refinanced. If the resulting maturity is less than 15 years, the applicant remains eligible for refinancing.

(2) For business loans, you can authorize refinancing if, based upon a reasonable payment amount which affords the applicant some flexibility and avoids hardship, the amortization of the loan amount would require more than 15 years. You cannot authorize refinancing when the amortization of the loan would require 15 years or less.

j. Partial Refinancing. When circumstances do not permit full refinancing (e.g., lien balance exceeds eligible physical loss), you must consider partial refinancing. If more than one prior lien is eligible, you need to determine the most beneficial way to apply the refinancing eligibility. You should consider the remaining terms, interest
rates, installment payment amounts, and any other pertinent factors, which will best assist the applicant (see paragraph 59 m.).

d. **Contact with Prior Lien Holders.** When considering refinancing, you should request a confidential credit report from each lien holder reflecting payment history, payoff amount and collateral used to secure the loan being refinanced.

l. **Prepayment Penalties.** A prior lien holder may have a legal right to enforce a prepayment penalty if we refinance all or any part of the existing lien(s). Whenever the lien holder elects to enforce a prepayment penalty clause:

   (1) You should seek to have it waived; and
   (2) If the lien holder agrees to waive it, obtain written confirmation at loan closing; or
   (3) If the lien holder does not agree to waive the penalty, it can be included in the refinancing eligibility.

m. **Reamortization.** When the prior liens cannot be fully refinanced and some unpaid balance will remain, you must carefully consider the level of the payments for the disaster loan combined with payments on the remaining unpaid balance. As a condition of receiving the partial refinance, the applicant must provide a written commitment that either the prior lien holder, or a lender of the applicant’s choice, has agreed to amortize the unpaid balance of the prior lien. The LAA must include a condition requiring this agreement, if the agreement has not been provided prior to approval.

n. **Repayment Terms.**

   (1) When we fully refinance an existing lien, the SBA payment generally should be at least equal to the amount of the principal and interest portion of the payment to the existing lien holder.
   (2) When we partially refinance an existing lien, the total of the applicant's payments to both SBA and to the existing lien holder for the unpaid balance generally should not exceed an amount equal to the principal and interest portion of the predisaster payment to the existing lien holder.
   (3) You must justify any exceptions in the case file.

o. **Return of Refinancing Proceeds.** When refinancing funds are included in a disaster loan, if the borrower fails or refuses to restore the damaged property, SBA will demand return of the proceeds for refinancing.

p. **Authority to Approve Refinancing.** Generally, the authority to approve refinancing accompanies the delegated authority to approve a loan. However, if the amount recommended for refinancing exceeds the amount recommended for physical loss, only the Applications Director or higher can approve the loan. The LO’s justification should
address such issues as additional repayment or collateral risk, how the applicant can address the physical loss in excess of the loan funds for that purpose, and the potential for abuse of the refinancing eligibility.

60. **RELOCATION** (37)

Relocation occurs anytime the victim either elects to or is required to move from the damaged home or business to any other location. Moving next door, across the street, or across the country are all relocations. However, the reason(s) for the move determines the type of relocation, and corresponding limitations and restrictions on eligibility. In states which have walk-away statutes, you must advise the applicant of potential eligibility limits due to the walk-away policy.

a. **General Rule.** By statute, we cannot provide assistance to any applicant (home or business) who wishes to relocate voluntarily outside the business area where the disaster occurred. However, we may provide assistance if a relocation is other than voluntary. Rebuilding the damaged structure at another location on the same parcel of real estate is not considered relocation unless the damaged structure was located in an SFHA and is being rebuilt in a non SFHA on the same parcel.

b. **Types of Relocations.**

(1) **Mandatory Relocation.** Relocation is mandatory when an applicant/borrower has RE damage and:

   (a) Is unable to repair or rebuild because appropriate governmental authorities will not permit repair or rebuilding. This usually occurs when the victim is denied a building permit, occupancy permit, or other required permission from local, county or State officials; or

   (b) The damaged site was in an SFHA and sustained substantial damage as defined by the NFIP and the relocation property is not in an SFHA. NFIP defines substantial damage as “damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal 50 percent of the market value of the structure before the damaged occurred.” For the purposes of establishing relocation eligibility, SBA will perform the calculation based on the loss amount and property value as established by the Loss Verifier. We will not require documentation from local authorities that the NFIP definition has been met; or

   (c) Is unable to repair or rebuild because the condominium association has voted not to rebuild.
(2) **Involuntary Relocation.** Relocation is involuntary when the applicant/borrower will be permitted to repair or rebuild, but elects to move because of "special or unusual circumstances" or "uncontrollable or compelling reasons" specifically cited in SBA's regulations (see subparagraph c. and d. below).

(3) **Voluntary Relocation.** Relocation is voluntary when the applicant/borrower will be permitted to repair or rebuild but instead elects to move. SBA can only fund a voluntary relocation if the applicant moves within the confines of the business area.

(4) **Business area** means the municipality that provides general governmental services to the damaged business or home. If not located within a municipality that provides general governmental services, then business area means the county or equivalent political entity in which the damaged business or home is located. In unusual cases, where the municipality is comprised of more than one county (e.g., New York City), the business area will be the county in which the borrower is located. SBA does not restrict the business area to divisions smaller than a city or town (i.e., school, hospital, other special purpose districts, election wards and precincts, etc.).

c. **Special or Unusual Circumstances.** When a homeowner or renter must relocate due to special or unusual circumstances, the relocation is involuntary. These circumstances include, but are not limited to:

1. Demonstrable risk that the business area will suffer future disasters;

2. Change in employment status, such as employment transfers, **loss of job,** relocation for a new job, lack of adequate job opportunities in the business area, or implementation of scheduled retirement plans within 18 months after the occurrence of the disaster;

3. Medical reasons; or

4. Special family considerations which necessitate a move outside of the business area.

d. **Uncontrollable or Compelling Reasons.** When a business must relocate due to uncontrollable or compelling reasons, the relocation is involuntary. These reasons include, but are not limited to:

1. Elimination or substantial decrease in the market for the business product or service as a consequence of the disaster;

2. Change in the demographics of the business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue the business in the business area;
(3) Substantial change in business costs as a result of the disaster which makes the continuation of the business in the business area not economically viable;

(4) Location of the business in a hazardous area such as an SFHA or an earthquake prone area;

(5) Change in the public infrastructure in the business area within 18 months prior to or as a result of the disaster that would result in substantially increased expenses for the business in the business area;

(6) Implementation of decisions adopted and partially implemented within 18 months prior to the disaster to move the business out of the business area for good and sufficient business or personal reasons; or

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

e. Eligibility Provisions, Amounts, and Limitations.

(1) Mandatory Relocation. When relocation is mandatory, we consider the real property a total loss, regardless of the actual extent of physical damage.

Mandatory relocation provisions do not apply to tenants and renters, except in cases of leasehold or similar improvements (e.g., owned manufactured housing on leased land).

(a) The applicant/borrower may relocate anywhere in the United States (including its territories and possessions and Puerto Rico). No reasons need be cited; however, the applicant/borrower must meet the criteria outlined in Paragraph 60 b (1).

(b) The applicant/borrower may not relocate to an SFHA if the damaged site was in an SFHA and sustained substantial damage as defined by subparagraph b.(1)(b) of this paragraph.

(c) The amount of eligibility for the damaged real property and improvements is the replacement cost of the damaged property subject to these provisions:

(i) The applicant/borrower may choose to move the damaged structure to the relocation site and repair the structure, provided the loan does not exceed the cost to build a comparable replacement structure at the relocation site;
(ii) The applicant/borrower may choose to purchase a replacement structure, provided that it is equivalent and the loan is not used for upgrading;

(iii) If the damaged property is a rental or investment property which has an unusually low predisaster FMV because of its physical condition (e.g., deferred maintenance), location, or similar market reasons, the cost to replace the structure cannot exceed its predisaster FMV (see subparagraph 45 e.);

(iv) If the damaged property is a condominium where the homeowners association has voted not to rebuild, the amount of eligibility for the damaged real property and improvements is not limited to just the market value or replacement value of the condominium itself but must also include the unit owner’s proportionate share of the condominium association’s common assets, such as buildings, amenities, etc.;

(v) Additional costs to meet building codes at the relocation site are eligible;

(vi) The applicant/borrower is also eligible for reasonable moving and storage costs. The limit for moving expense for contents of the damaged structure is $3,000 for home loan borrowers and $5,000 for business loan borrowers. Allowances above these amounts must be substantiated and documented; and

(vii) Disaster mitigation assistance is not eligible.

(2) Involuntary Relocation. When relocation is involuntary, there is no effect on disaster loan eligibility based upon where the victim elects to relocate. Other limitations apply, as follows.

(a) The applicant/borrower may relocate anywhere in the United States, including its territories, possessions, and Puerto Rico. Involuntary relocation provisions also apply to tenants and renters.

(b) The amount of loan eligibility is subject to these provisions:

(i) The physical loss eligibility for RE is limited to the cost of repairing the damage to the real property at the disaster site;

(ii) The physical loss eligibility for tenants with eligible LHI is limited to the cost of repairing the LHI at the disaster damaged site;
(iii) Any code compliance costs which would have been required to repair or rebuild at the damaged property site are not "transportable" to the relocation site;

(iv) Any costs of required code compliance at the relocation site may be eligible as an alternate use of proceeds;

(v) Disaster mitigation assistance is not eligible; and

(vi) Moving expenses are not eligible as part of a physical loss loan.

(3) Voluntary Relocation Within the Business Area. The amount of loan eligibility is subject to the same restrictions as involuntary relocations.

f. The Relocation Plan. If you recommend approval for relocation, the case file must state how the applicant plans to replace the damaged property.

(1) A relocation plan should address at least the following:

(a) A detailed explanation of why the applicant either desires to or must relocate;

(b) If the relocation property is known, a copy of the purchase contract, agreement for sale, etc., and a complete legal description;

(c) A complete cost breakdown and financing proposal for the property to be purchased, built, or leased;

(d) If the relocation property is unknown (not selected), details of the applicant's intentions as to what type of property they will be looking for, and where;

(e) What plans, if any, the applicant has for the disaster damaged property;

(f) How the applicant will handle any remaining financial obligations on the damaged property; and

(g) A flood zone determination on the relocation property.

(2) Business relocation plans should also address:

(a) If the applicant has adequate funds to sustain the business and its owners until relocation property is selected, built, or leased;

(b) If the applicant performed adequate market research on the prospective business to be purchased; and
If business operations are changing, whether the owner has the necessary managerial ability and industry knowledge.

In addition to the requirements stated above, if the applicant is a unit owner in an association that has voted not to rebuild, they will need to submit the following:

(a) A complete copy of the Association’s CC&R’s.

(b) A copy of the Association’s Master Insurance Policy.

(c) A copy of the documentation from the Association stating they will not rebuild and identifying the applicant’s/borrower’s proportionate share of the total common area.

(d) If available, documentation stating the predisaster value of the land improvements for the Association’s common areas.

If the applicant is uncertain about relocation (other than mandatory situations), you must process the application under the assumption the applicant will repair the damaged property.

When you discuss relocations, you should strongly urge applicants to make any purchase agreement, contract for sale, or new lease subject to written SBA approval.

g. Refinancing. Authorized refinancing may be available to victims who relocate.

h. Collateral Requirements and Disaster Damaged Property. The damaged property from which the victim is relocating may have significant value.

(1) Collateral Requirements. Generally, we require both the damaged property and the relocation property as collateral. If the damaged property has outstanding liens, we will permit the lien holder to file a lien in the same amount on the relocation property, provided they release their lien on the damaged property. In these cases we will take a subordinate lien on the relocation property and a first lien on the damaged property. Otherwise, we will take a first lien on the relocation property and a junior lien on the damaged property.

NOTE: For loans of $50,001 - $250,000, we will not require a title search on the disaster damaged property when the Loan Officer determines that the relocation property is sufficient to fully secure the loan.

(2) Disaster Damaged Property. We have an interest in the damaged property because the property may have value as a source of additional funds for the victim
to recover financially from the disaster, and the damaged property may be ineligible for future disaster assistance.

(a) If you determine the proceeds from the sale of the damaged property are necessary to reduce the loan amount (for the purpose of lowering the installment payment to a level which the borrower can better afford), sale of the damaged property becomes advisable.

(b) **Damaged property used as** collateral should have a “due on sale” clause. However, when the damaged property is **not** taken as collateral, the LAA must include a stipulation requiring that the borrower make their best efforts to sell the damaged property within two years from date of note and submit the net proceeds to SBA (to be applied in inverse order of maturity (IOM) to the outstanding loan balance). This is required unless the borrower demonstrates that doing so would constitute an undue hardship. If not sold within the prescribed two year period, the requirement to apply the net proceeds to SBA remains in effect.

(c) Relocation may make the damaged property ineligible for any future disaster loan assistance. For example, a damaged property located in a SFHA from which the victim relocates is ineligible for future assistance when:

(i) The relocation was mandatory; or

(ii) The property is located in a Community Under Sanction or in a Nonparticipating Community.

(d) When we determine property to be ineligible for any future assistance, the LAA must include a stipulation requiring the borrower to place on the title a notice that the property is ineligible for any future disaster loan assistance for damage caused by any type of disaster.

61. **UPGRADING** (38)

Physical disaster loans provide funds for the repair or replacement of disaster damage to property. The objective is to restore the property to its predisaster condition.

a. **General Rule.** Any improvement beyond predisaster condition is upgrading, and is not eligible. However, certain exceptions are authorized on a case-by-case basis.

b. **Distinguishing Upgrading from Acceptable Replacement Choices.** Similar replacement satisfies the basic objective without raising concerns of upgrading or alternate uses of eligibility. Borrowers can exercise a reasonable degree of discretion in choosing how to replace the damaged or destroyed property. Upgrading usually creates a need for funds
in addition to the eligible amount, or involves using excessive amounts to improve one thing by foregoing necessary repairs to another. Trade-offs of size and quality within the approved loan amount are permissible.

c. **Applicant Funded Upgrades.** An applicant may make upgrades using his/her own resources or borrowed funds. When an applicant proposes to use other resources, you must ensure that:

1. The applicant has the ability to repay the disaster loan and any other debt; and
2. SBA’s credit position is not jeopardized.

d. **Building Codes.** All property repaired or acquired with disaster loan proceeds must meet applicable building codes in effect at the time the necessary permits are obtained. The cost of making improvements to meet code requirements necessary to obtain a permit or other similar approval to make repairs is eligible. Upgrades necessary to meet building codes are not eligible in cases of voluntary or involuntary relocation.

e. **Minimum Residential Standards.** All residential property repaired or acquired with disaster loan proceeds must meet minimum (reasonable) standards of decency, safety, and sanitation. Examples of minimal residential standards include interior sanitation (bath and toilet) facilities, heat, safe wiring, and similar concerns normally covered by codes. Normally, this is addressed by local building and occupancy codes and the costs are eligible. However, if not addressed, these judgments about minimum standards and associated costs are made by Loss Verification.

f. **Protective Devices and Mitigation Measures.** In some circumstances, additional protective devices and mitigation measures not in place prior to the disaster are eligible improvements (see paragraph 63).

62. **ALTERNATE USE OF LOAN ELIGIBILITY (39)**

Generally, borrowers must use their disaster loan eligibility to replace the lost property in like kind. However, in some situations, we can allow the applicant to purchase property different from what was lost. The determining factor is the reasonableness of each request. For example:

a. A tenant (renter) who suffered a substantial PP loss is forced to vacate his/her primary residence and is unable to locate comparable rental quarters. We can allow them to use disaster loan eligibility to purchase a primary residence, if:

1. The amount of the disaster loan eligibility does not exceed the administrative limit on personal property; and
2. The cost of the residence is no more than its FMV; and
(3) Any cost of the residence that exceeds disaster loan eligibility is available from one or both of the following:

(a) Injection of funds that do not have to be repaid; and/or

(b) A loan from another lender.

b. Owners of destroyed MH used as their primary residence may be allowed to use their total eligibility to purchase or build a conventional home. Conversely, owners of damaged or destroyed conventional homes used as their primary residence may be allowed to use total eligibility to purchase a MH (not a travel trailer) to be used as a primary residence. However, the cost of the replacement home cannot exceed its appraised value.

c. Handicapped, disabled, and physically challenged individuals may have special needs which require even more latitude when making alternate use determinations. For example:

(1) An applicant is confined to a wheelchair which was damaged or destroyed by the disaster in addition to other personal property items. The wheelchair was an older, manually operated model. In lieu of replacing certain other PP items, we could allow the applicant to purchase a motorized wheelchair as a replacement for the manual model.

(2) A member of an applicant's household is confined to a wheelchair. No PP damaged was sustained, only RE damages. In lieu of repairing or replacing some items, we could allow the construction of wheelchair access ramps even if none previously existed.

d. Upgrades determined to be ineligible under paragraph 61 remain ineligible for an alternate use of proceeds.

63. PROTECTIVE DEVICES AND MITIGATION MEASURES (40)

a. General Rule. Protective devices or mitigation measures in place before the disaster are eligible. If not in place before the disaster, eligibility is based on the need for adding such a device or measure. Examples of these devices or measures include, but are not limited to:

(1) Retaining walls;

(2) Fences;

(3) Seawalls or bulkheads;
(4) Relocating utilities; and

(5) Modifying structures.

b. **Pre-existing Protective Devices or Measures.** If the devices or measures existed prior to the disaster, the full cost to repair or restore to predisaster condition is eligible, except when the devices or measures were installed outside of a home or other building. In those instances, only the cost of repairing or restoring the device to functional predisaster condition is eligible. (The costs of repairing or restoring any cosmetic or nonfunctional embellishments are subject to the landscaping limits.)

c. **Code Requirements for Protective Devices or Mitigation Measures.** If the devices or measures did not exist prior to the disaster, the full cost of a device or measure to meet code requirements is eligible.

d. **Necessity of Protective Devices or Mitigation Measures to Make Disaster Repairs.** If the devices or measures did not exist prior to the disaster, but are absolutely necessary to repair or restore the property, the full cost is eligible if:

(1) It is the only feasible or practical method of repairing or restoring disaster damage to land, land improvements, or structures; and

(2) It prevents immediate and continuing danger of serious damages to structures (not land and land improvements); and

(3) We receive written evidence from a professional third-party (such as an engineer's report) which clearly establishes the necessity for the device or measure (opinions from real estate agents, insurance adjusters and the like should not be considered); and

(4) You document the necessity in the case file.

e. **Post Disaster Mitigation Measures.** The statute provides eligibility for the costs of these devices or measures subject to the following:

(1) Mitigation eligibility depends on there being verified RE or LHI damage. If there is only PP damage, there is no mitigation eligibility. Measures designed only to protect PP are not eligible. Eligibility is exclusive to the damaged property and does not transfer if the applicant relocates.

The loan amount must include funds for physical losses. We cannot approve a loan for post-disaster mitigation only.

(2) The maximum eligible cost is 20 percent of the verified physical loss (before any duplicated benefits are deducted), with a maximum of $200,000 for home loans only.
(a) This additional mitigation amount up to 20 percent is not subject to the $200,000 administrative limit for real property damage for home loans. The 20 percent is based on the full amount of the loss for both RE and PP. Thus, the maximum possible amount of a disaster home loan is $640,000 ($200,000 for RE damage, $40,000 for PP damage, $200,000 for mitigation, and $200,000 for refinancing).

(b) For business loans, the 20 percent is subject to the $2,000,000 legislative limit.

(c) For refinancing purposes, you do not include the additional amount in calculating substantial damage or when determining the eligible refinancing amount.

(d) You may include code required upgrades which could also qualify as mitigation and which cannot be funded due to the administrative limit under mitigation eligibility.

(e) For mitigation amounts greater than $50,000, only the AA/DA or designee can approve these applications, based on the recommendation of the CD/PDC (or designee).

(3) The proposed device or measure must protect or mitigate against damage from the same type of occurrence as the declared disaster (e.g., protection against future flood damage when the disaster was a flood).

(4) The applicant must choose the protective device or mitigation measure. You must not recommend any specific mitigation measure or comment on the relative merits of one measure as compared to another. The Loss Verifier must evaluate each request for need or appropriateness before you can take action.

(5) During loan processing you must:

(a) Not include the additional mitigation amount in the credit elsewhere determination (because these costs are voluntary);

(b) Address in the case file how the applicant will fund the difference if the cost of the device or measure exceeds the allowable mitigation loan amount; and

(c) Include in the LAA a specific use of proceeds stipulation.

(6) Generally, applicants can request funds for mitigation at any time during the filing period, or if a loan is approved, through the time of full disbursement. After full disbursement, we will accept a request for additional funds for mitigation if we
determine that the delay resulted from substantial causes essentially beyond the control of the applicant.

(7) You must base the 20 percent limitation on the **verified physical loss** (the original verified physical loss, plus increases, and less decreases) at the time of the approval of an additional amount for mitigation. If the amount of the verified loss for physical damage is subsequently decreased, we do not decrease eligibility for mitigation funds we have already approved. But if the amount of the verified loss for physical damage is subsequently increased, mitigation eligibility is increased proportionally.

(8) Alternate use of loan eligibility is permissible to cover mitigation measures. The 20 percent limit applies only to the amount added to the loan amount for physical damage, and not to the alternate use. As with all requests for alternate uses of eligibility, approval is contingent upon our conclusion that sufficient repairs can be made to make the damaged property reasonably usable and safeguard the Agency's collateral. Generally, we accomplish this by disbursing that part of the proceeds to fund the necessary repairs prior to that part to fund the mitigation measure.

(9) In cases of a condominium or similar association where the damage is to the real property of individual unit owners and to the common property owned by the association, the individual condominium unit owners may assign their mitigation eligibility to the condominium association.

(10) Tenants who own leasehold improvements are eligible for mitigation. However, a lease requirement to repair the owner's real property does not convey mitigation eligibility to the tenant.

f. **Pre-Disaster Mitigation Loan Program.** See appendix 13 for an explanation of program guidelines and procedures.

64. RESERVED

65. RESERVED
CHAPTER 7

ELIGIBLE LOAN AMOUNT

66. LIMITS ON LOAN AMOUNTS (41, 115)

There are legislative limits imposed on the disaster loan program (Section 7(c)(6), Small Business Act). These are further restricted administratively in SBA’s regulations (13 CFR part 123) and this SOP. The administrative limit applies to the combined total amount of all home loans to any one applicant for any one disaster. Members of a single household (e.g., husband, wife, and dependents) cannot make separate applications for the purpose of exceeding the administrative limit.

a. Administrative Limits on Home Loan Amounts.

(1) For real estate (RE) damage, the limit is $200,000. Real Estate damage includes all physical damage to a primary residence and appurtenant structures, landscaping, land and land improvements, relocation costs, and permissible upgrading.

(2) For personal property (PP) damage, the limit is $40,000. Personal Property includes all household contents of the primary residence and eligible vehicles.

(3) For mitigation measures, the limit is 20 percent of the verified loss for physical damage (both RE and PP damage), up to a maximum of $200,000.

(4) For refinancing, the limit is the eligible physical loss up to $200,000.

(5) The maximum amount of a disaster home loan for a SINGLE disaster is $640,000.

b. Legislative Limit on Business Loan Amount. The maximum amount of any business loan (physical and EIDL) is $2,000,000. This statutory limit applies to the combined total amount of all loans to any one applicant, including its affiliates, for any one disaster and includes the provision for increasing a loan for hazard mitigation measures. SBA can authorize an exception to this legislative limit if the applicant is a major source of employment (MSE) (see paragraph 67).

The SBA Administrator may increase the $2 million business loan limit under an individual disaster declaration based on appropriate economic indicators for the regions(s) in which the disaster occurred. The loan limit increase will be published in the Federal Register.
c. Disaster Loan Limit for Combined Home and Business Loans. If a business (not an MSE) has eligible losses of $2,000,000 and its principal owner(s) has home losses, the following limits apply.

(1) A business organized as a corporation, a subchapter S corporation, a limited liability entity (LLE), a general partnership or a limited partnership, etc., is a separate legal entity and the principal(s) have full home loan eligibility regardless of the amount of the business loan. For example: A corporation has eligible losses of $2,000,000. The corporation is owned by two individuals, each with a 50 percent interest. Both 50 percent owners are eligible to apply for damages to their respective primary residences up to the maximum administrative home limits.

(2) A business operated as a sole proprietorship is not a separate legal entity and we must aggregate the losses to the maximum (non-MSE) loan limit for a single disaster of $2,000,000. However, the home loan cannot exceed the administrative limits. For example: A sole proprietorship has eligible losses of $1,950,000. The primary residence of the sole proprietor is also damaged. Because the two are not separate legal entities, the combined maximum legislative loan limit for one disaster is $2,000,000. Therefore, the home loan application could not be approved for more than $50,000.

NOTE: Eligibility is affected differently when a principal of a business concern also has a schedule C or E business (as reported on their IRS Form 1040) and a home, each damaged by the same disaster. For example: An LLE has eligible losses of $1,800,000. Member A has eligible home losses of $240,000. Member B has eligible home losses of $325,000 (including refinancing) and also has a schedule E rental business with eligible losses of $100,000. Member A has full eligibility for the losses to the LLE and their home because each is a separate legal entity. Member B’s total eligibility for all losses is limited to $2,000,000 because of the affiliation of the sole proprietorship (rental business). However, if Member B foregoes the eligibility for the schedule E rental business, they retain full eligibility for their home losses, the same as Member A.

d. Legislative Limit on Economic Injury Loan Amount.

The legislative limit of $2,000,000 on disaster business loans applies to EIDLs. The limit applies to the total of all direct physical and economic injury disaster loans approved to any one borrower and its affiliates for any one disaster.

67. MAJOR SOURCE OF EMPLOYMENT (MSE) WAIVER OF LENDING LIMIT (42)

The Agency may waive the $2,000,000 legislative limit if a business is a MSE. This is to minimize unemployment of large numbers of people in a disaster-impacted community.
a. **MSE Eligibility.** A business applicant qualifies as an MSE if, at the time the disaster commences (or at a later date, subject to the conditions of subparagraph (d) below), it is a concern which has one or more locations in the disaster area, which locations individually, or in the aggregate:

(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 or more of the work force in an industry within the disaster area and, if the concern is a nonmanufacturing concern, employed no fewer than 50 employees in the disaster area or, if the concern is a manufacturing concern, employed no fewer than 150 employees in the disaster area; or

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

**NOTE:** You must aggregate employees of concerns sharing common business premises to determine MSE status of a nonprofit applicant owning the premises.

b. **Discretion to Waive Legislative Loan Limit.** SBA may waive the $2,000,000 limit if:

(1) The damaged location(s) of the MSE are out of business or in imminent danger of going out of business **as a result of the disaster** and the waiver is necessary to permit the location(s) to reopen or stay open in order to avoid substantial unemployment in the disaster area; and

(2) The applicant has used all funds from its own resources and all available credit elsewhere to alleviate the physical damage and/or economic injury sustained.

c. **Use of Applicant's and/or Owner's Assets and Credit.** SBA will consider a waiver of the legislative limit only to the extent that loan assistance in excess of $2,000,000 is necessary after the applicant, its affiliates, and its principals use business and personal assets and credit to the greatest extent possible without incurring undue hardship.

d. **Eligibility Subsequent to Disaster Date.** In the case of an MREIDL only, a business may be eligible for MSE status if it does not qualify as an MSE at the time the disaster commences, but subsequently, as a result of changed economic circumstances, meets the criteria in subparagraph (a), (b), and (c) above. The applicant must provide a statement explaining the changed economic circumstances which justify status as an MSE.
For example:

1. The applicant company did not meet the MSE standard at the commencement of the disaster, but subsequently increased the number of permanent employees to 250 or more;

2. The applicant employed less than five percent of the work force in its industry at the commencement of the disaster, but subsequently a larger employer in the industry closed, so that the applicant company then employed 5 percent of more of the work force in the industry.

The applicant may provide such a statement:

1) with the original application,

2) as part of a reconsideration request within the stated reconsideration deadline, or

3) as an increase request within two years from the date of the original LAA.

NOTE: For the purposes of this subparagraph only, the time the disaster commences is presumed to coincide with the MREIDL applicant’s incident period, as defined in paragraph 21 a. (4). For the purposes of determining the MREIDL applicant’s MSE eligibility under subparagraph (a), if the applicant has more than one location, all locations are presumed to be located within the disaster area.

e. Processing and Approval Authority.

(1) The PDC may decline or withdraw applications for more than $2,000,000 in accordance with normal policies. The PDC may also determine that an applicant is not an MSE. (A decline for MSE status is subject to specific reconsideration procedures. Refer to paragraph 96).

(2) If we can approve an application from a credit perspective and justify an MSE waiver the PDC must prepare both recommendations and send the case file to ODA. The CD/PDC’s recommendations must include the initial recommendation and concurrence by an approving official with delegated authority in accordance with the rule of two.

(3) All approval recommendations must contain the following loan stipulations:

(a) Net Earnings Clause;
(b) Initial Public Offering (IPO) Clause; and

c) Distribution and Compensation Clause.

NOTE: The exclusion of any of these stipulations requires justification in the case file.

(4) The AA/DA must take final action on the credit and MSE recommendations.

f. **Applicability of Executive Orders.** In certain circumstances, Executive Orders concerning floodplain management and wetlands protection may apply (see paragraph 108).

68. **VERIFICATION OF DAMAGE** (43)

Applications for physical disaster loan assistance require on-site inspections which are conducted by Field Inspectors assigned to the Disaster Verification Center (DVC). The only exceptions to on-site inspections are Auto-Declines, Pre-LV Declines, and loans to unit owners for condominium association assessments (see paragraph 47).

a. Field Inspectors conducting on-site verifications have specific responsibilities that include, but are not limited to:

   (1) Determining estimated cost of repair or replacement of real, personal, and business property;

   (2) Providing information gathered during the on-site inspection to guide you in establishing eligibility within program guidelines;

   (3) Estimating replacement and predisaster FMV of damaged property.

b. Loss Verifiers assigned to the Loss Verification Department in either FOC are responsible for conducting all Surveys and Preliminary Damage Assessments (PDAs);

c. Loss Verifiers assigned to the PDC Loss Verification Department have the following responsibilities:

   (1) Conducting flood zone determinations for all applications, which includes determining if property is located within the CBRS;

   (2) Performing reverifications **(including on-site)** and progress inspections **(CONUS/OCONUS)**.
(3) Determining appropriateness of and conducting on-site reverifications and on-site progress inspections;

(4) Returning original applications to the DVC when appropriate;

(5) Evaluating the appropriateness of disaster mitigation requests; and

(6) Reviewing predisaster mitigation project cost estimate/contractor’s bid, etc. for reasonableness in cost and reasonableness of the measure as it relates to appropriate hazard mitigation.

NOTE: In circumstances where areas are inaccessible and inspections are not deemed feasible within a reasonable time frame, the use of an alternate method of damage verification is essential for the timely delivery of assistance to disaster loan applicants from such areas. Accordingly, Loss Verification should identify any such areas by coordinating with FEMA, State and local officials; and by utilizing data from all available sources such as rapid needs assessments, map overlay, and GIS data, prior to implementation of alternate damage verification procedures.

69. **REQUESTING REVERIFICATION** (71 d.)

(1) If an applicant does not agree with the Field Inspector’s damage estimate, you must advise applicants that a request for reverification must:

   (a) Be in writing; and

   (b) Be accompanied by documentation that shows the cost to restore the property to predisaster condition is more than the amount in the Field Inspector’s report.

(2) You should discourage (delay) reverification requests until after you determine the likelihood of loan approval. If repayment ability is not evident using the original Field Inspector’s report, the outcome cannot change unless the reverification:

   (a) Results in refinancing eligibility; and

   (b) This additional eligibility is sufficient to overcome a lack of repayment ability. (If decline was indicated for other than repayment reasons, a reverification would not alter the outcome.)
70. **DETERMINATION OF AMOUNT OF PHYSICAL LOAN ELIGIBILITY** (44)

Loan Officers are responsible for making all eligibility determinations, including ineligible property, and applying program limitations to eligible property.

a. **Definitions.**

(1) The *SBA verified total loss* is the amount reported by the loss verifier without regard to program limits.

(2) *Uncompensated physical loss* is the difference between SBA verified total loss and any deductions (insurance or other recoveries) for duplication of benefits (DOB).

(3) *Eligible physical loss* is the difference between the uncompensated physical loss and any amounts in excess of landscaping limits or other program lending limits.

b. **Loan Officer Adjustments to the SBA Verified Total Loss.**

The Loan Officer must analyze the verified losses, determine eligibility of all damaged property, apply all restrictions and limitations, and add any associated indirect expenses. The result is the adjusted verified total loss.

(1) For *personal property* (home loans), the *loss verification report* provides an amount of eligibility for disaster damage.

(2) For *business contents*, the *loss verification report* provides an amount of eligibility for disaster damage. If your financial analysis leads to discrepancies on the *loss verification report*, e.g., inventory, then you must consult with the PDC Loss Verification Department.

(3) For *real property* (all loans), the *loss verification report* provides an estimate of the cost to repair/replace all disaster damage by category. You must not vary from the report without first consulting with the PDC Loss Verification Department. You must document any adjustment in the case file.

(4) You are responsible for applying all other restrictions and limitations in determining the amount of physical loss to *eligible* property.

(5) You may increase the SBA verified total loss to account for any associated indirect expenses in accordance with the provisions of subparagraph 45 b.(2).

c. **Deductions from the SBA Verified Total Loss.**
By statute, eligibility for SBA disaster loans is limited to underinsured or uncompensated losses. You must deduct insurance or any other compensation received (from any source) for damage to eligible property to determine the amount of uncompensated physical loss. You do not deduct any insurance or other compensation received for purposes other than loss or damage to eligible property. (This unduplicated compensation is available to the applicant to apply toward repair of ineligible property or other purposes.) Deductions from the SBA verified total loss can originate from:

(1) Other Disaster Relief Organizations.

(a) American Red Cross (ARC) Grants. ARC disaster emergency assistance is usually in the form of vouchers for food, shelter, clothing, clean-up kits, etc. We do not consider this type of assistance a duplication of benefits (DOB) and you do not deduct it from the verified losses. However, if the ARC provides assistance for permanent repairs, you must deduct this assistance rather than require repayment to ARC.

(b) FEMA Public Assistance (PA). Private Nonprofit (PNP) organizations may receive grant assistance for emergency protective measures prior to applying for a loan from SBA for their disaster-related damages. This emergency grant assistance may duplicate the loss SBA verified (e.g., debris removal). We must perform a duplication of benefits (DOB) check on all PNP applications. If the applicant did receive grant monies for emergency protective measures that duplicate our verified loss, the Loan Officer should decrease the eligible loss amount to correspond with the DOB.

(c) FEMA Individual Assistance (IA).

Assistant to Individuals and Households Program (IHP). There are two broad types of IHP assistance, each with several types of assistance, listed below. IHP assistance of any type may not duplicate SBA disaster loan assistance. Housing Assistance that duplicates SBA’s verified loss must be deducted from eligibility during processing or subsequent loan actions. Other Needs Assistance (ONA) that duplicates SBA’s verified loss must be repaid from SBA loan proceeds.

(i) Housing Assistance (HA): Disaster-related housing assistance for Individuals and Households displaced from their predisaster primary residences, and/or whose predisaster residences are rendered uninhabitable; who
are underinsured, or have no insurance to provide their housing needs.

A. Temporary Housing: Rental assistance and emergency living expenses (ELE) provided to displaced disaster victims. Do not deduct FEMA funds allocated for these purposes from SBA's verified total loss.

B. Repairs: Funds provided for minimal repairs to make a residence habitable. You must deduct any amount if it exceeds $100.

C. Replacement: Financial assistance for the replacement of owner-occupied residences. You must deduct any amount if it exceeds $100.

D. Permanent Housing Construction: Assistance to individuals in insular areas and remote locations. Applicants who receive FEMA assistance in the form of permanent housing do not retain SBA real estate eligibility.

(ii) Other Needs Assistance (ONA, also known as Other Assistance - OA) Financial assistance to individuals and households who have no applicable insurance and (when appropriate) have been denied by SBA, for disaster-related expenses and serious needs. We do not deduct ONA assistance from the SBA verified losses during processing.

A. Medical, Dental, & Funeral Expenses are not a DOB.

B. Personal Property, Transportation, and Other Expenses.

   (1) Repair/replacement of personal property and vehicle(s) is a DOB.

   (2) Depending on the circumstances “Other Expenses” may or may not be considered a DOB.

(iii) If you recommend approval, including limited approval, you eliminate the duplicated benefit by using loan
proceeds to repay the grant program in the amount of the duplicated assistance. The LAA must include a use of proceeds requiring reimbursement to IHP in the form of a co-payable check.

NOTE: You must never use RE loan proceeds to repay an IHP award for personal property losses.

(iv) An IHP award may exceed SBA’s verified loss of personal property. In this situation, the maximum DOB for SBA is the amount of verified personal property loss. For example, the IHP award for personal property is $7,500 and SBA verifies personal property damages as a result of the disaster at $6,900. In this scenario, the maximum DOB for personal property losses would be $6,900; $6,900 would also be the amount of the loan proceeds that would be repaid to FEMA.

(v) There may be circumstances when the applicant has received the maximum total grant award from FEMA and continues to have unmet disaster-related medical personal property needs. In this limited circumstance, the disaster victim may have eligibility. To determine the eligible loss amount you need to deduct FEMA’s medical personal property grant from the amount needed to repair or replace the disaster-related items.

(2) Net insurance proceeds are funds available to the applicant for repair/replacement of disaster damaged property and must be deducted from the SBA verified total loss.

(a) Exclusions from Net Insurance.

(i) Insurance may be for damage to both eligible and ineligible property, without specific policy provisions. If breakdowns are not provided, you must apply the insurance recovery first to ineligible property and then to eligible property.

(ii) If the holder of a lien on real property and/or business M&E has legal control of the insurance proceeds and requires that the proceeds be applied to reduce the lien balance, you do not deduct that amount. The reason the lender required the funds does not matter, only that they had the legal right to do so and did. You must obtain substantiating evidence either in writing from the lien

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holder or from a documented telephone conversation. Contacting the lender by telephone and verifying that the lender required the insurance proceeds be applied to the lien is not only acceptable but is preferable from both a loan processing and customer service perspective. However, the Loan Officer must state in the chron log that the lender mandated or required the pay down or payoff of the existing lien(s).

NOTE: You must deduct the insurance if an applicant elects to apply insurance proceeds for the reduction of an existing lien, or if the applicant requested the lender to demand payment.

(b) **Personally Owned Vehicles.** You must deduct from the verified loss to a personally owned vehicle the insurance proceeds voluntarily or involuntarily used to reduce or pay off a lien on the vehicle.

(3) **Other Recoveries and Deductions.** You must also deduct any other recoveries or compensation which would duplicate an SBA loan for physical repairs.

(a) **Free Labor and Materials.** You must deduct the dollar equivalent of free labor provided by the applicant, relatives, friends or charitable third parties to restore disaster damage, and the cost of any materials donated to the applicant for use in the restoration.

NOTE: If a relative or friend is an established professional in the applicable field and the repairs are performed as a third party transaction, labor costs may be eligible. Inclusion of these costs must be approved by the Supervisory Loss Verifier.

(b) **Overhead and Profit.** You must deduct the amount of overhead and profit included in the Loss Verifier's estimate if the applicant business or an affiliated business is used to repair disaster damage. (The LAA contains a standard paragraph which prohibits borrowers from paying overhead or profit for repairs performed by, or for materials acquired from, a business in which the borrower owns a 50 percent or greater interest.)

(c) **You must deduct third party payments/adjudicated settlements when liability is acknowledged by another or legal proceedings determine compensation has been made or accepted.**

(d) **Miscellaneous Recoveries.** You must deduct grants or gifts, typically from State or local governments and volunteer agencies,
including ARC, Community Development Block Grants (CDBG), Salvation Army, Catholic Charities, Mennonite Disaster Services, and similar organizations.

(e) Government Sponsored Buyouts. You must deduct the net proceeds received by the applicant/borrower if FEMA or any other agency buys the damaged property. You do not deduct moving expenses associated with the purchase.

d. Assignments of Pending or Future Insurance Recoveries.

(1) If you know the amount of an insurance settlement at the time of loan processing, you deduct it from the SBA verified total loss.

(2) If you do not know the full amount of an insurance settlement at the time of processing, you only deduct the known amount. This arises when an insurance claim for disaster damage:

(a) Has not yet been processed or settled;
(b) Has been only partially processed or settled; or
(c) Is in dispute, or when an applicant claims that additional insurance coverage may be due.

(3) You must include an appropriate stipulation in the LAA providing for an assignment of any pending insurance settlement as follows:

(a) If additional amounts are expected, use the appropriate LAA stipulation to take an assignment of any insurance proceeds in excess of the amount deducted.
(b) If no insurance is deducted but some is expected, use the appropriate LAA stipulation to take an assignment of any insurance proceeds.

e. Determining the Final Eligible Loan Amount. After you make all required deductions from the SBA verified total loss in accordance with subparagraphs c. and d. above, you have determined the uncompensated physical loss. You must now make the following adjustments to determine the eligible physical loss:

(1) Apply the landscaping limits;
(2) Apply the legislative or administrative limits;
(3) Add any eligible amount for necessary and appropriate additional protective devices or mitigation measures within the legislative limit; and

(4) Add any amount of authorized refinancing.

f. Lending for the Insurance Deductible Only. The provisions of this paragraph apply to any disaster whenever the applicant seeks a loan solely for the insurance deductible. Lending for the deductible avoids many time consuming tasks without significantly increasing the risk of DOB.

(1) When the estimate of damage from the insurance company is unknown, we will lend the lesser of the insurance deductible or the eligible physical loss based on SBA’s loss verification.

(2) When the estimate of damage from the insurance company is known and exceeds SBA’s damage verification, we will accept the insurance company’s estimate of damage and, after review by PDC Loss Verification, increase the eligible loan amount as appropriate, up to the amount of the deductible.

(3) Confirming the Deductible Amount.

   (a) You must verify the amount of the deductible, either by phone with the insurance company or agent, or by requesting a copy of the declarations page of the policy from the applicant. If all attempts fail, you may accept the applicant's statement as to the amount of the deductible and you must issue conditional commitment letter (CCL) requesting a copy of the declaration page.

   (b) Do not take assignments of insurance when the loan is for the deductible only.

   NOTE: If the applicant desires to borrow more than the deductible, the above does not apply and you must perform the standard eligibility calculations.

71. ROUNDING OF DOLLAR AMOUNTS (45)

Because the Agency's loan accounting system accommodates loan amounts in even hundreds, dollar amounts of all disaster loans must be rounded to the next higher whole hundred when determining the actual loan amount. The final loan amount is rounded only once. You then allocate the use of proceeds accordingly (RE, PP, M&E, inventory, etc.).

72. DUPLICATION OF BENEFITS (DOB) (73)
To avoid DOBs for approved loans, every LAA stipulates borrowers must promptly notify and pay to SBA any insurance proceeds or other compensation which exceeds the amount taken into consideration when we determined eligibility.

a. **Deducting Compensation.**

You must deduct any type of compensation specified in paragraph 70. This applies to amounts known at the time of processing.

(1) Duplication can also occur when any agency provides assistance for a loss which is the primary responsibility of another agency to provide. Each agency should, in turn, offer and be responsible for delivering its program(s) without concern about duplication with a program later in the sequence.

(2) The sequence list determines the order in which a program should provide assistance and what other resources it must consider before it does so. Under a Presidential declaration, generally, the delivery sequence is:

   (a) Volunteer agencies' emergency assistance programs (ARC, Salvation Army, etc.);

   (b) FEMA Home Repair and Replacement;

   (c) **Flood and hazard** insurance;

   (d) SBA and Department of Agriculture disaster loans;

   (e) FEMA IHP assistance;

   (f) Other federal, state and local government agencies (e.g., Housing and Urban Development (HUD) CDBG grants);

   (g) Volunteer agencies' additional assistance programs (ARC grants or other free assistance); and

   (h) The Cora Brown Fund (administered by FEMA).

(3) Occasionally, FEMA or similar agencies may make an out-of-sequence advance to a disaster victim financially able to borrow full SBA disaster loan eligibility. If this happens:

   (a) FEMA will notify us of the out-of-sequence assistance by updating the DOB information it provides.
(b) The loan proceeds must repay FEMA for that portion of the loan made for any eligible purpose(s). If we learn of the assistance after approval but before full disbursement, we must allocate funds to repay FEMA through a loan modification action.

NOTE: You must never use RE loan proceeds to repay an IHP award for personal property losses.

(c) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication.

b. Processing.

(1) In Presidential declarations, do the following.

You must check all disaster loan applications during processing for possible DOBs. DOBs include, but are not limited to FEMA awards, insurance proceeds, and grant programs. Consider any insurance or other compensation award (e.g., FEMA Home Repair) made after loan approval of up to $500 for each award and $1,000 cumulative as a de minimis amount for duplication of benefits purposes which eliminates the need for a loan modification. The only documentation required will be a comment in the chron log of the de minimis amount.

(2) In SBA declarations, do the following.

(a) You must check all disaster loan applications during processing for possible DOBs. DOBs include, but are not limited to, insurance proceeds, grant programs, and awards from voluntary agencies.

(b) Consider any insurance or other compensation award (e.g., ARC) made after loan approval of up to $500 for each award and $1,000 cumulative as a de minimis amount for duplication of benefits purposes which eliminates the need for a loan modification. The only documentation required will be a comment in the chron log of the de minimis amount.

(3) You must check with the applicant, the mortgagee, or mortgage servicing agent to verify whether hazard insurance and/or flood insurance (if applicable) was in force if there is no proof in the case file. You must contact the insurance company or agent and request a breakdown of insurance proceeds (settlement sheet or adjuster's proof of loss) the applicant has either received or agreed to accept. The breakdown should specify amounts for:
(a) Damage to real, personal, or business property;
(b) Any additional living expenses; and
(c) Any business interruption and extra business expense.

c. Do not deduct Federal Income Tax benefits from verified losses. We do not consider this a DOB even though IRS regulations permit victims to file for a refund of part or all of Federal income taxes paid in certain prior years or to carry forward any unused portion to reduce future years' Federal tax liabilities.

73. USE OF APPLICANT'S AND/OR OWNER'S ASSETS AND CREDIT (78)

a. We do not require the use of the applicant's or owner's assets and credit if a physical loan (including refinancing) does not exceed:

(1) The administrative limits for a home loan; or
(2) The legislative limit for the combined total of all loans to a business applicant and its affiliates.

b. We may require the use of the applicant's or owner's assets and credit if the loan:

(1) Is an EIDL; or
(2) Is for more than $2,000,000 (MSE).

74. ELIGIBLE LOAN AMOUNT: EIDL (123, 124, 125, 127, App. 20)

a. Definition. Economic Injury (EI) is a change in the financial condition of a small business concern or small agricultural cooperative attributable to the effect of a specific disaster, resulting in the inability of the concern to meet its obligations as they mature, or to pay ordinary and necessary operating expenses. Economic injury may be reduced working capital, increased expenses, cash shortage due to frozen inventory or receivables, accelerated debt, etc.

The EIDL loan amount is restricted to the working capital needed to return the business to normal operations. Needs are working capital requirements the business could have covered had the disaster not occurred, but cannot meet on its own or through other resources or recoveries until normal operations resume.
b. **Processing** EIDL loan amount is determined using one of two processing methods:

1. **Phase I** assumes a business physically damaged has also sustained economic injury (EI) and provides immediate working capital to eligible applicants. The business must have been operating for at least one year prior to the disaster and apply for a physical loan. If the applicant requests more EI funds than we can authorize under Phase I, you must use the Phase II method.

Any SLO 2 or 3 may take final action on a Phase 1 EIDL.

**Phase I:**

(a) Applies to all physical declarations (Presidential and Administrative, or Agency); and

(b) Does not require a needs analysis.

2. **Phase II** requires a needs analysis to identify the essential working capital needs of the business.

The loan amount cannot exceed the lesser of needs or EI. When needs exceed economic injury, you must explain in the EIDL Worksheet, Section E, how the applicant is going to meet this shortfall. If significant, it may prohibit loan approval.

Only Cadre SLO 3 or others having a specific EIDL delegation from the AA/DA can take final action on a Phase II approval (see subparagraph 78 b (1)).

**Phase II applies to:**

(a) Stand Alone EIDL:

   (i) SecAgs;

   (ii) Governor's Certifications [7(b)(2)(D)];

   (iii) Secretary of Commerce declarations;

   (iv) Applicants in contiguous counties in Presidential declarations;

   (v) Cases without physical damage to the applicant's business;

(b) All reconsideration requests;
(c) All increase requests (including Phase I EIDLs);

(d) Any B/E application received 60 days after the incident ending date;

(e) All MSE requests;

(f) MREIDLS;

(g) Any applicant not agreeable with the Phase I EIDL amount;

(h) When the Phase I eligibility computation exceeds $100,000.

c. **Transferability of EIDL Eligibility (For an existing business to be transferred to a new business).** This policy applies in all cases when an EIDL applicant elects to discontinue the disaster impacted operation and immediately pursue another business venture. Both the existing and new concerns must qualify as small businesses and be in compliance with 13 CFR §123.300 and §123.301. As in all cases, you must fully document and justify the ability of the new company to repay any proposed disaster loan(s) taking into account all start-up costs, working capital requirements, and contingencies. The amount of EIDL eligibility in these cases is strictly based upon an analysis of the disaster impacted business. For Phase II processing, you must make a reasonable presumption of the return to normal operations for the existing business had it continued. The working capital requirements of the new business are not to be considered for determining EIDL eligibility. However, loan amounts must be limited to the working capital needs of the new business when it is obvious that the EIDL eligibility of the old business exceeded those needs.

75. **SIZE DETERMINATION** (App. 21)

a. **Why a Size Standard?**

SBA's size standards define whether a business concern is small and, therefore, eligible for an EIDL. SBA establishes size standards by types of economic activity, or industry, under the North American Industry Classification System. NAICS manuals are published by the Office of Management and Budget (OMB).

b. **Size Standards for an EIDL Applicant.**

13 CFR §121.301(a) states: "For Business Loans and Disaster Loans (other than physical disaster loans), an applicant business must satisfy two criteria:
(1) The size of the applicant alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged; and

(2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher.

c. Definitions.

(1) **Business concern** may be a sole proprietorship, partnership, limited liability entity, corporation, joint venture, association, trust, or cooperative.

(2) **Unaffiliated concern** is a single legal entity that does not have any affiliates.

(3) **Affiliates**: See paragraph 19 c.(3). For detailed guidance on defining affiliation, refer to 13 CFR §121.103.

If your review of the assets and sources of income of the applicant concern and its principals show the existence of other business interests, you must determine whether affiliation exists. Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both, either directly or indirectly. It does not matter whether control is exercised, so long as the power to control exists. Control may be either affirmative or negative. SBA considers factors such as:

(a) Common ownership, common management, contractual relationships, identity of interest, affiliation through predecessor concerns, and nature of control;

(b) The applicant concern and all its domestic and foreign affiliates, whether organized for profit or as nonprofit, as potential members of the affiliated group; and

(c) The nature of ownership and control. For example:

(i) The 100 percent owner of a closely held corporation also operates another business as a sole proprietorship. In this case, due to common ownership and control, affiliation is obvious.

(ii) An applicant partnership has two general partners, both of whom have 10 percent ownership in a corporation. Here the partners have an identity of interest and are viewed as one
party having 20 percent ownership in the corporation. Whether that ownership is controlling is dependent on the ownership of the remaining 80 percent, who are the officers, and what are their powers of office. If the remaining 80 percent is held by one person who is also the president, the partners probably do not have control. However, if the remaining 80 percent is divided equally among eight other persons, the partners could have control. The officers, the powers of office, the relationship among the other eight owners, and the relationship among the partners and those eight owners, are all factors in the final determination of control and affiliation.

(4) **Affiliated group** means two or more distinct legal entities which are affiliated.

(5) **Labor Surplus Area Differential.** The applicable size standards are increased by 25 percent when the applicant is in a labor surplus area. Labor surplus areas are listed annually in the Department of Labor publication *Area Trends*. This information is available online at [www.doleta.gov](http://www.doleta.gov).

d. **Types of Size Determinations.**

a. **Initial (informal) size determinations** qualify EIDL applicants as small business concerns. You make initial size determinations and an SLO takes final action. You must obtain guidance from legal counsel if issues are unclear or controversial. You must decline the application if the determination results in a finding of "other than small" and send an SBA Form 355, "Application for Small Business Size Determination," with our decline letter.

b. **Formal size determination** is the reconsideration of an initial size determination. You make formal size determinations based upon information submitted by the applicant on SBA Form 355. (Refer to 13 CFR §121.1001 to §121.1009 for policies for a formal size determination.) We require SLO concurrence and a written concurrence by the Applications Director or designee, however only the CD/PDC or designee can take final action. If this results in a finding of other than small, they must decline the application. Our decline letter must state that the applicant has the right to request a review of the size decision. The applicant must make this request to SBA's Office of Hearings and Appeals (OHA) within 30 days of the formal decline.

c. The size determination made by the CD/PDC is final unless OHA accepts a petition for a review. The procedures for requesting discretionary reviews by OHA are found in 13 CFR Part 134.
76. RESERVED
77. RESERVED
CHAPTER 8

LOAN PROCESSING

78. AUTHORITY TO APPROVE, DECLINE, WITHDRAW, OR MODIFY LOAN APPLICATIONS (8)

SBA offers six types of disaster loans: Home, Business/EIDL (B/E), Nonprofit, Stand Alone EIDL, Military Reservist EIDL (MREIDL), and Pre-Disaster Mitigation Loan Program (PDMLP). Recommendations to approve, decline, or withdraw an application initially rests with the processing Loan Officer based on delegated responsibility.

a. Rule of Two. Loan recommendations generally require concurrence. If the official who has the authority to take action does not agree with the recommendation, the next higher level of authority must resolve the issue with the following exceptions:

(1) DCMS includes business rules for initial Auto-Decline and Pre-Loss Verification (Pre-LV) review. A Supervisory Loan Officer (SLO) reviewing Pre-LV declines can override the automated decision and route the case file for regular processing without obtaining the next higher level of authority.

(2) DCMS also includes business rules for approving loan modifications. An SLO, Attorney, Loan Officer (1, 2, or 3 as delegated), Paralegal Specialist (2 or 3), or a Customer Service Representative (CSR) can approve certain types of loan modification actions without obtaining the next higher level of authority. These actions are limited to:

   (a) Approving an extension of the disbursement period for a period of time not to exceed six (6) months beyond the original disbursement deadline, and no greater than 12 months from the date of the LAA. The requirements of subparagraph 122 d. do not apply to these actions.

   (b) Approving an extension of the deadline to return the loan closing documents. The extension may not exceed 60 days from the date of the loan modification action and may not exceed 12 months from the date of the LAA.
(c) Changing and/or updating telephone numbers.

(d) Providing pay-off information.

(e) Canceling undisbursed loans in their entirety, after a written or oral request from the borrower, except where the borrower has experienced an adverse change.

b. General Limits on Loan Approval Authority.

(1) Authority to Approve Loans (for any applicant and its affiliates for a single disaster).

(a) SLOs may approve all disaster loans up to and including $750,000, and subsequent loan modifications that cause the total loan amount to increase up to and including $750,000, based on their level of delegated authority as indicated below.

(i) SLO 1 can approve all Home loan actions.

(ii) SLO 2 can approve all Home, B/E (Phase 1 only) and PDMLP loan actions.

(iii) SLO 3 can approve all Home, B/E (all phases), Nonprofit, Stand Alone EIDL, MREIDL, and PDMLP loan actions. This level of designation applies only to:

(iv) A cadre employee after receiving specific authority from the CD/PDC or designee; or

B. A temporary employee after receiving specific authority from the AA/DA.

(b) The CD/PDC, Applications Director, Accounts Manager, or any SBA employee officially designated as acting in either position has the authority to approve all disaster loans up to and including

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$1 million and subsequent loan modifications that cause the total loan amount to increase up to and including $1 million.

(c) Only the AA/DA, or designee, has the authority to approve loans in excess of $1 million and subsequent loan modifications that cause the total loan amount to exceed $1 million.

(d) When eligible, loan applications for businesses in which a Member of the United States Congress holds an ownership interest must be submitted to the AA/DA or designee for approval (see subparagraph 29 j. for eligibility requirements).

(2) Loans to SBA Employees, Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and Advisory Council Members. Applications from these individuals, or members of their household (as defined in 13 CFR §105.201(d) of the Standards of Conduct regulations), may be accepted and processed without a review by the Standards of Conduct Committee as follows.

(a) Home Loans.

(i) When there is no apparent conflict of interest, the CD/PDC or Deputy Center Director (DCD/PDC) may approve or decline these applications, but before taking final action, should notify the appropriate District Director (DD) or Regional Administrator (RA) of the proposed action.

(ii) Where the CD/PDC or DCD/PDC believes the appearance of a conflict of interest may exist, and in all cases where the applicant is a disaster employee or a member of the employee's household, the case file must be forwarded to ODA for final action. Only the AA/DA or designee can approve or decline these applications.

(b) Business Loans. Only the AA/DA or designee can approve or decline these applications.

(3) Repair or Replacement Cost of Real Property Exceeding Predisaster Value. The Applications Director or designee must approve business/EIDL loans if the allocation to repair or replace disaster damaged real property exceeds the Loss Verifier's estimate of the predisaster fair market value. This does not apply when the loss is to manufactured housing (MH).
(4) Check endorsement authority rests with the CD/PDC, Applications Director, Chief Legal Advisor or their designees.

c. Proposed modifications to loans approved by ODA must have ODA concurrence.

d. The delegating official will notify disaster employees in writing of his/her loan approval and decline authority.

e. Approval and disbursement of disaster loans are subject to availability of funds.

79. CHARACTER DETERMINATION (74)

It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. If any adverse information develops concerning the character or background of a disaster loan applicant, as disclosed on SBA Form 912, "Statement of Personal History," or from any other source, SBA must make a determination as to the applicant’s character before a loan can be approved.

(a) Form 912: Statement of Personal History. The response to the personal history question of Form 5 or 5C determines whether an SBA Form 912 is required.

If the question is answered in the affirmative, you must require the applicant to provide Form 912 and an explanation of the offense.

If the applicant did not respond:

(1) Home Applicants: the personal history question as stated on the home application does not require a yes or no answer. If there is no response indicated, the determination is that the applicant has answered the question.

(2) Business Applicants: If the applicant did not respond to the personal history question on the business loan application, you must contact the applicant by phone to ascertain the answer to the question.

b. Fingerprints. If we receive an SBA Form 912 with an affirmative answer to questions 7, 8, or 9, concerning past criminal history, we must determine if a fingerprint sample (obtained on FBI Form FD-258, "Fingerprint Card") is necessary.

(1) CD/PDC, DCD/PDC, Applications Director or their designees determine if fingerprints are needed. In deciding whether fingerprints are required, consultation with Chief Legal Advisor or designee may be helpful and appropriate.
(2) If the past criminal activity disclosed on SBA Form 912 is both minor in nature and was committed more than 10 years ago, fingerprints may not be required to continue processing. If fingerprints are required, you must follow the policy in subparagraphs (c) and (d) below.

c. Persons Convicted of a Felony During and in Connection with a Riot or Civil Disorder or Other Declared Disaster.

(1) By statute (P. L. 90-448, 106(e)), persons convicted during the past year of a felony during and in connection with a riot or civil disorder are not eligible. You must decline their application for policy reasons.

If the conviction was more than one year ago, these applicants must complete an SBA Form 912 and an FBI FD-258. We cannot approve their application until we obtain an evaluation of the character issue from ODA.

(2) Persons convicted of a felony (such as looting) during or in connection with a declared disaster are not eligible.

d. Criminal Arrests/Indictments/Convictions/Parole/Probation.

(1) General Policy - Home Loan Applicants. We can process, approve, and disburse unless we learn that the applicant:

(a) Has been arrested for a criminal offense;
(b) Is presently under indictment;
(c) Has been convicted of a criminal offense; or
(d) Is presently on parole or probation.

(2) Exceptions to the General Policy – Home Loan Applicants.

(a) If recommending decline or withdrawal for other than character reasons, the decline or withdrawal letter must include the appropriate reason(s) for decline or withdrawal, notify the applicant that a character element of SBA’s loan consideration procedure has not been resolved, and require that the applicant provide SBA Form 912 and an explanation of the offense with any reconsideration/reacceptance request.

(b) If recommending approval, you must require the applicant to submit an SBA Form 912 and an explanation of the offense. The
Applications Director or designee will review the information to determine if the fingerprint requirement can be waived.

(i) If fingerprints are waived, we can approve the application, after appropriately annotating SBA Form 912 and forwarding it to Office of Security Operations (OSO).

(ii) If fingerprints are required, you must withdraw the application. You cannot take any action until we obtain an evaluation of the character issue from ODA.

(c) When ODA completes its character evaluation and notifies the PDC of the decision, the Applications Director or designee will:

(i) If the applicant is found eligible, reactivate the application and complete processing; or

(ii) If not eligible, reactivate and decline the application for policy reasons.

(d) Generally, we do not approve loans to applicants presently on parole or probation following conviction of a serious offense. However, ODA will consider approving a home application provided the applicant provides written endorsement of the applicant's good character from a reputable third party.

ODA’s character evaluation will specify whether it will grant a waiver upon submission of a satisfactory character endorsement.

(3) General Policy - Business Loan Applicants. We do not require Form 912 from anyone connected with the applicant if the personal history question on the Form 5 is answered "No." The personal history question applies only to principals of the for-profit or nonprofit applicant business. The question is not applicable to officers and directors unless they are principals.

(4) Exception to the General Policy – Business Loan Applicants. If the personal history question on Form 5 is answered "Yes," you must:

(a) If recommending decline or withdrawal (for other than character reasons), the decline or withdrawal letter must include the appropriate reason(s) for decline or withdrawal, notify the applicant that a character element of SBA's loan consideration procedure has not been resolved, and require that the applicant provide SBA Form 912 and an explanation of the offense with any reconsideration/reacceptance request.
(b) If recommending approval, you must require the applicant to submit SBA Form 912, and an explanation of the offense. The Applications Director or designee will review the information to determine if fingerprints can be waived.

(i) If fingerprints are waived, we can approve the application, after appropriately annotating Form 912 and forwarding it to OSO.

(ii) If fingerprints are required, you must withdraw the application. You cannot take any action until you receive an evaluation of the character issue from ODA.

(c) When ODA completes its character evaluation and notifies the PDC of the decision, the Applications Director or designee will:

(i) If the applicant is found eligible, reactivate the application and complete processing.

(ii) If not eligible, reactivate and decline the application for policy reasons.

(d) Generally, we do not approve loans if the applicant or a business principal is presently on parole or probation following conviction of a serious offense. However, ODA will consider applications from:

(i) Sole proprietors, provided the applicant provides written endorsement of his/her good character from a reputable third party;

(ii) Partnerships, corporations, and LLEs, where the apparent bar to eligibility was committed independently of any official act for the business and the individual will divest all direct and indirect interest in the business.

80. ESTABLISHING OCCUPANCY AND OWNERSHIP (88)

You must establish that the applicant is either the occupant of the damaged property or the owner of the damaged property.

a. Occupancy.

Applicants are not required to provide evidence of occupancy if:
(1) The address and Social Security Number(s) contained on the FTRs and/or the Credit Bureau report are the same as on the application, or;

(2) In conversations with the applicant any apparent discrepancy is resolved to your satisfaction and recorded in the case file, or;

(3) Verification of occupancy is reflected on the NEMIS report.

b. Eligibility.

(1) Deeds generally establish eligibility. However, for both unsecured and secured loans, when legal ownership documents are not already in the case file, you must use one of the following sources (in their listed order) to establish real estate eligibility:

a. FEMA Report (Ownership verification), or;

b. One of the following documents, as appropriate:

   (i) Title to the damaged MH or the equivalent legal documentation to establish proof of ownership (seek legal guidance for state specific requirements);

   (ii) Official Record – Deed, Recorded land installment contract, will, court records, etc.;

   (iii) Affidavit from county official;

   (iv) Property tax records;

   (v) Insurance policy forms; or

   (vi) Recorded contact with mortgage company.

(2) For secured loans in which eligibility can be established using the documentation stated in subparagraph (1), before making an approval recommendation, you must request a vesting report for each damaged/collateral property requiring ownership information. In the event that a vesting report is unavailable, you must request a current deed from the applicant using a Conditional Commitment letter, OC-13 condition, or custom letter as appropriate.
The ECOA and the laws of each State affect who SBA may or should require to sign disaster Notes, collateral documents, and guarantees. Chief Legal Advisor must advise of the proper procedures and requirements for each State. The following is a general explanation of the ECOA (Title VII of the Consumer Credit Protection Act). References to "Regulation B" in this chapter are references to Regulation B (12 CFR Part 202) issued by the Board of Governors of the Federal Reserve System which supplements ECOA.

a. We cannot ask a spouse to sign a Note, guarantee, or other document solely because of marital status. However, when we rely on a spouse's income to establish repayment ability or when State law makes it necessary, we can require the spouse to sign the Note. Also, a spouse can be asked to sign all collateral documents covering property in both names which is required to perfect SBA's collateral.

NOTE: With respect to community property states, see opinion of General Counsel dated July 25, 1994, in appendix 12.

b. Because we cannot request financial information about a spouse, you cannot ask whether a spouse is working and can contribute to the family income. Therefore, you must make a reasonable judgment on the amount an owner must draw to support their dependents. If the remaining income is inadequate to repay, you must decline the loan. You can consider spousal income only when the applicant (principal) and the spouse volunteer this information. When we rely on a spouse's income for repayment ability, we may ask reasonable questions to determine the probable continuity.

82. CREDIT INFORMATION (76)

The overall credit of an applicant, including affiliates, must be satisfactory prior to recommending a loan approval. To determine satisfactory or unsatisfactory credit, you must have a thorough understanding of all variables that comprise overall credit history.

a. Credit Bureau Reports (CBR).

(1) General Requirement. All disaster loans must have a CBR. If none is available from an SBA contractor, we require a report from another reputable credit bureau or direct verification of credit references and other credit sources.

(2) Direct Credit Checks. In some outlying areas, credit bureaus may have only minimal (if any) information on individuals and businesses. If CBRs are not informative or available, you must perform direct credit checks with banks and other sources.

(3) Who to Check.
(a) All applicants appearing on a home loan application.

(b) All business principals.

(c) All businesses.

NOTE: We do not permit substituting credit checks on the owners of a business in lieu of checks on the business itself.

b. **Credit Information From Banks or Other Lenders.**

(1) **Refinancing.** Whenever a disaster loan involves refinancing, you must request specific credit information from the lien holder. You should initially attempt to obtain this information by telephone. If the lien holder(s) will not provide the information on the phone, you must attempt to obtain the information in writing. This does not apply to the refunding of interim loans (see paragraph 59).

(2) You must include the following paragraph in every SBA letter which requests credit information from a financial institution:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-630. Pursuant to Section 113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

c. **Business Credit Reports.** All business and EIDL applications, including affiliates, require a business credit report from Dun and Bradstreet (D&B) or a similar commercial credit reporting company with the exception of sole proprietorships. For sole proprietorships, the CBRs of the owners are usually sufficient. Although discretion to order D&B reports may be exercised when deemed necessary, D&B reports should rarely be ordered on sole proprietorships.

d. **Discussion of Credit Report Content with Applicants.** You can discuss CBR items which are not of public record, provided you do so in a responsible manner. However, your discussion should only address those derogatory items and other accounts to the degree necessary to process the application. You must record all discussions in detail in the chron log.

Any consumer loan applicant (home or personal property) who asks for a copy of their credit report will receive all credit reports on them in the case file. The Privacy Act requires that Federal agencies provide requestors with their credit
reports if those reports are kept in a system of records. Any business loan applicant who asks for a copy of their credit report will be treated as a FOIA requestor, and will receive that report unless it is exempt from disclosure under FOIA.

e. **Poor Credit History.** You must give applicants with poor credit history every opportunity to provide explanations before you reach a conclusion about their overall credit worthiness. Generally, a history that consists of minor, isolated instances of poor credit or late payments is acceptable **provided that:**

   (1) The applicant explains the lapse; and

   (2) The applicant has other accounts with "as agreed" payment records.

   (3) You cannot recommend approval if you determine that credit history is unsatisfactory.

   **NOTE:** An applicant’s poor credit history **cannot** be overcome by the credit history of a guarantor.

f. **Lack of Credit History.** You must explore and identify the reasons for a lack of credit history when making credit judgments. You cannot simply judge applicants without credit cards, charge accounts, or other forms of electronic credit histories to have satisfactory or unsatisfactory credit. However, if an applicant can demonstrate (preferably over a minimum period of 2 years) their ability to make regular, noncredit payments (e.g., utilities, rent, insurance, medical or dental bills, etc.) in an as agreed manner, you can make a determination of satisfactory credit. You must justify these decisions in your case file.

g. **Prior or Existing SBA Loan History.** If the application indicates previous or existing SBA loan experience, or if you discover SBA financing through other sources such as the **Agency’s records**, you **must** determine if the performance is or was satisfactory.

   (1) You do not need to call the servicing office if:

      (a) The **Agency’s records** reflect no history of delinquency (delinquency being a payment more than 30 days past due), or returned (NSF) checks; and

      (b) There have been no deferments; and

      (c) The damaged or collateral property is not in an SFHA; or

      (d) The loan has been sold to a third party.
(2) If the loan has been sold to a third party, the Agency’s records will not reflect the loan performance after the date of sale. In these situations, you must document the following in the case file:

(a) Indicate that the loan has been sold including the date of the sale;

(b) Address the pre-sale history;

(c) Address the post-sale payment history based on CBR, 5C, or other case file information, if circumstances warrant; and

(d) Address the borrower’s conformance with any insurance or other special conditions. You should determine these conditions using available case file information.

h. Bankruptcy or Reorganization. Applicants (home or business) who have previously filed for bankruptcy, or are currently in the process of reorganization are not automatically precluded from receiving assistance. The type of bankruptcy filing, when it occurred, the details of the reorganization plan, the plan’s success or failure, and subsequent disposition are just some of the factors, which bear on the overall evaluation.

(1) Chapter 7 Bankruptcy (Liquidation). We do not automatically disqualify applicants discharged in prior Chapter 7 bankruptcies. The effect on the credit decision generally depends on the circumstances. The older the discharge, the less effect it may have on the credit decision. You can recommend approval for applicants discharged in bankruptcy within the last two years if you document the following in the case file:

(a) The bankruptcy was caused by circumstances beyond the applicant's control (e.g., unemployment, prolonged illness, medical bills not covered by insurance, protracted labor strikes, disaster related, etc.) as opposed to bankruptcy caused by the applicant's actions (e.g., misconduct, avoidance of creditors, careless overextension of debt, etc.); and

(b) The applicant's credit history since the bankruptcy is satisfactory; and

(c) The applicant has repayment ability despite the circumstances surrounding the bankruptcy.

NOTE: Use caution in cases of self-employed applicants whose bankruptcy occurred during previous self-employment, or applicants whose current employment is not stable.
Chapter 13 Reorganization (Wage Earner's Plan).

(a) A Wage Earner's Plan (WEP) applies to individuals and indicates some effort to pay certain creditors. A WEP can make it possible to settle debts for only a portion of what is owed, while retaining personal assets. The maximum term permitted for a WEP is five years and once approved, the wage earner can incur additional debt only with permission from the court. Generally, the court will not approve additional credit unless the purpose is vital to the well being of the wage earner or family members.

(b) You can recommend approval if:

(i) The applicant has made all payments on the WEP in a satisfactory manner, based on direct contact with the Trustee, online contract information sources, or other sources; and

(ii) Total debt service is reasonable, and,

(iii) A written approval from Bankruptcy Trustee/Court is a stipulation of the LAA.

Business Reorganization (Chapter 11). Businesses may be in one of many different stages of the Chapter 11 filing procedure. This can impact our ability to approve, or even process the application. Therefore, you must discuss these cases with counsel before you begin and follow their advice for any legal impact to the validity of the plan. You should discuss:

(a) Whether a plan was filed with the Bankruptcy Court;

(b) If the Court accepted the plan;

(c) Whether the business is following the plan;

(d) How much time remains before the business will emerge from the plan; and

(e) If the Court will consider allowing the applicant to incur additional debt outside of the plan.

Prior SBA Loan Discharged in Bankruptcy. Applicants who had a prior SBA loan discharged in bankruptcy are not automatically barred from receiving disaster loan assistance.
j. Delinquency on Federal Obligations. "Federal obligations" include, but are not limited to: any direct Federal loans, contracts, and/or grants; student loans; and debts owed to the IRS, etc. Generally, we will not approve loans to applicants who are delinquent on any Federal debt, or have a judgment lien against their property, unless one of the following applies.

(1) If a Federal obligation is delinquent, but no judgment lien has been filed, we can approve a loan only if the Federal agency involved provides evidence that the debt is no longer delinquent and there is reasonable assurance that the applicant will comply with the terms of the loan agreement.

(2) If a Federal obligation is delinquent and a judgment lien has been filed, we can approve a loan only under the following circumstances.

(a) When the delinquency on a debt resulting in a lien is caused by the disaster itself, we have the authority to waive the restriction. This applies whether the debt pre-existed the disaster, or was the result of the disaster. Because we do not provide funds to pay another Federal creditor, you must make workout arrangements in conjunction with any approval recommendation.

(b) A debtor who has a judgment lien and made arrangements before the disaster to satisfy the debt, and whose adherence to those arrangements before the disaster was satisfactory is eligible. We must obtain concurrence from the creditor agency that the predisaster agreement was being satisfactorily honored.

The Applications Director or higher must approve these exceptions or waivers.

k. Lawsuits. You must obtain complete details of any pending lawsuits. You must submit the information to counsel for an opinion regarding the existing or potential impact to approval.

83. CONSUMER CREDIT PROTECTION ACT (REGULATION Z) (77)

a. Whenever we decline a loan in whole or in part because of information contained in a credit report, our decline letter must also include the name and address of the credit reporting agency.

b. Whenever we decline a loan in whole or in part because of information obtained from other than a credit reporting agency, our decline letter must advise the applicant they may submit a written request for disclosure of the nature, not the
source, of the information upon which we based the decline action. They must do this within 60 days of notification.

(1) This applies if the decline concerned the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(2) While the law does not require disclosure to an applicant of the SOURCE of the information received in a direct inquiry, the intent of the law is that we MUST give the applicant enough facts to be able to refute or challenge the accuracy of the information.

84. COMPANION AND ASSOCIATED FILES (79)

a. **Companion Case Files.** Multiple home, business and/or EIDL loan applications received from the same applicant (and/or any related entities, affiliates, or business principals) for a single declared disaster are companion files and should be indicated as such in DCMS. Because the applicable loan terms may vary, generally they must be processed as separate case files. However, the same LO should process companion case files when possible to ensure consistency in the analysis and decision.

We must make separate loans to:

(1) An applicant who suffers damage to both their primary home and business;

(2) Affiliates of business loan applicants who file for physical damage and/or economic injury.

**Exception:** We can consolidate applications from business concerns with identical ownership into a single case file (see paragraph 86.c.).

(3) Additional loan application(s) for the same disaster event may be received under a different declaration for damaged properties located in adjacent states. These files are companions.

b. **Associated Case File(s).** Applications received for separate disaster events are not companions. SBA designates these as associated files.

(1) If an associated application is pending, the same LO should process associated case files when possible.

(2) The AA/DA may, for specified disasters, allow consolidation of associated applications for back-to-back disasters. This may occur when it is too difficult to differentiate the damage from one disaster to the next and/or
there was insufficient time to make repairs from the first disaster before a subsequent disaster occurs.

85. BUSINESS/EIDL (B/E) LOANS (80)

B/E loans are restricted to business physical and economic injury loans for the same legal entity. (See paragraph 84 b. for exception.) When the applicant applies for physical losses, we automatically include an EIDL.

If you are processing a physical business loan and a decline becomes apparent for reasons which also affect the EIDL decision, do not fully process the EIDL. In these cases, the decline letter for the physical loan must state: “Due to the nature of this decline, we have not fully analyzed your economic injury. Should you seek reconsideration, we will then determine your eligibility for economic injury disaster loan assistance.”

86. WITHDRAWAL OF APPLICATIONS (82)

Withdrawing an application, either at the applicant's request or by SBA does not constitute a processing decision. However, the rules relating to reacceptance requests apply (see paragraph 98).

a. At Applicant's Request. We can withdraw an application at any time during processing if we receive a written or oral request. When an applicant orally requests to withdraw the application during processing, you must note the conversation in the chron log. Our withdrawal letter must reference the date of the conversation or written request.

b. By SBA. We must withdraw applications which we cannot process to a decision because of a lack of (or incomplete) response to a Loan Processing 7-day letter or inability to verify losses (documented by Field Inspector’s written comment). Our withdrawal letter must specify what information is needed and also state the reacceptance deadline.

NOTE: Reaccepted files that do not have an original verification should be forwarded to the DVC for inspection.

c. Case File Consolidation. You must discuss the option of case file consolidation if:

(1) An applicant owns 100 percent of two or more businesses which were damaged by the disaster; and

(2) Completes a separate application for each business.
Upon the applicant's agreement, you may combine the applications into one case file and withdraw the other(s).

87. **DECLINE OF APPLICATIONS** (83)

If you recommend decline, you should address ALL decline reasons. You must advise the applicant in writing of each reason for decline and their reconsideration rights. You should follow the standard decline language for all original decline letters. In the event a Loan Officer feels that the standard decline language is not appropriate, a custom letter is acceptable; however, this should be the exception and used only in rare cases. If you are unable to address all aspects of processing due to lack of information or other issues the letter to the Applicant must advise them that all processing issues have not been addressed.

88. **DOCUMENTING REPAYMENT ABILITY** (84)

Cash flow, not collateral, is the basis for establishing repayment ability. We must have reasonable assurance of an applicant's ability to repay any proposed loan. For home loans using standard processing procedures, we determine this by the Fixed Debt Method.

For business loans, we determine repayment ability by the results of the financial analysis performed on the business.

(a) **Documenting Income and Determining Repayment Ability for Disaster Home Loans.**

In determining repayment ability you must consider all sources of income to assure that income is continuing. You should examine the applicant's occupation, opportunity for future advancement, education, professional (occupational) training, length of employment, etc., and apply the following.

1. You cannot consider age when determining repayment ability. However, you must consider future income reductions if applicants are approaching retirement.

2. You may consider part-time employment (e.g., a worker for various temporary employment agencies) as continuing income if it occurs year after year at similar levels.

3. You may consider seasonal employment (e.g., construction, oil fields, etc.) as continuing income if applicants work full-time (on a seasonal basis) with the same or various employers. You may consider unemployment compensation as continuing income if it is received in conjunction with seasonal employment.
b. Sources of Income.

(1) Reconciliation of Income to Application.

Financial information reported on the application should be consistent with FTRs or other verified sources. If there is a discrepancy of 5% or more annually between the reported and verified income, you must determine the correct amount and justify it in the case file. You must use FTRs if applicants cannot provide a satisfactory explanation or documentation of differences between incomes reported on FTRs vs. the application. In the case of a material difference, refer to paragraph 88 c.

For example, a loan application indicates wages of $64,000. The applicant has been with the same employer for seven years. The IRS tax information for the most recent year reveals wages were $49,000. The applicant informs you of a recent promotion from assistant vice-president to general manager. You must contact the employer, substantiate the higher wage, and document appropriately. Then you can use $64,000.

Similarly, an application indicates annual wages of $42,000 from employment as a full time high school teacher. The prior two FTRs reveal wages of $38,100 and $40,000 respectively. You contact the applicant and learn the difference is due to annual cost of living increases of approximately five percent. Because this is reasonable and consistent with historical information, you can use the higher wage of $42,000 without additional documentation. Your documentation must detail the discussion which led to this conclusion.

(2) Salaries and Wage Income.

The applicant’s FTR data, obtained directly from IRS, is our primary source of income documentation. If the applicant has changed employment within the last two years you must verify employment and document current income.

NOTE: In areas that do not use FTRs, such as commonwealths, territories, or U.S. possessions, we require comparable documentation.

(3) Social Security Income.

Social Security benefits which are long term in nature (generally three years or more) may be used. If you know the benefits are of short duration, exclude them from gross income without written confirmation.
(a) FTRs may be used for verification when benefits are reported to the IRS.

(b) In many cases, recipients are not required to report social security on FTRs, even if FTRs are filed for other reasons.

i. When the applicant is of retirement age, as determined by the Social Security Administration, the benefit amount disclosed on the application may be used without further verification.

ii. If the applicant is NOT of retirement age but receives disability, dependent, or other benefits, written verification (e.g. copy of award letter) is needed to determine the amount, beneficiary, and duration of benefits.

(4) Pensions and Similar Retirement Income.

FTRs generally disclose the distribution of pensions, annuities, IRA and 401(K) distributions, etc. However, if it is below the minimum level required to file an FTR, no separate documentation is necessary.

(5) Self-Employment Income.

You must review the available FTR and other information to determine the continuing income from the business. On a case-by-case basis, you may need additional information (e.g., current financial statements) if FTRs are not current or representative of present operations.

(a) You can consider the employment stable if the applicant has been self-employed for 2 years or more or was previously employed in the same line of work.

(b) You must consider the impact of non-cash and non-recurring items on cash flow.

(c) You must consider trends if income fluctuates from year to year.

(6) Other Income.

(a) You may consider overtime pay and bonuses as continuing income if the applicant:
(1) Received this income on a consistent basis for the last 2 years; and

(2) Will receive it on a regular basis in the future.

(b) You may consider interest and dividend income continuing if the amounts stated on the application generally reconcile to FTR data and the financial information provided in the application.

(c) You may consider note receivable and seller-financed mortgage income continuing if the amounts stated on the application generally reconcile to FTR data and the financial information provided in the application.

(d) Applicants in the military services, and certain other applicants, may be entitled to different types of pay in addition to their base pay (e.g., flight or hazard pay, allowance for rations, clothing, quarters, car, etc.). You can consider this part of stable income.

(e) You may consider alimony and child support income if it is properly documented and continuing.

NOTE: Child support income can only be considered if disclosed by the applicant for repayment ability.

(f) You may consider nontaxable income, such as tax free bonds, if properly documented.

c. Conflicting FTR Information.
If the applicant provides an FTR that differs substantially from the IRS transcript, report the differences immediately to the OIG (see paragraph 9).

89. THE FIXED DEBT METHOD (FDM) (App. 26)

a. General Rule.

Disaster loans are unplanned debts, and create neither an increase in assets nor an improvement in lifestyle. Because disaster loans repair/replace existing property, applicants pay twice to maintain those assets. Although replacing disaster damaged property is our mission, the nature and purpose of the debt does not affect the fact that there is a certain maximum level of debt that one can afford. The FDM is a lending concept based on guidelines used by the mortgage banking industry. The FDM assumes:
(1) There is a maximum debt level (expressed as a percentage of gross income), one can afford. This is known as the Maximum Acceptable Fixed Debt (MAFD);

(2) If the maximum debt level is not exceeded, the balance of gross income can pay taxes and ordinary and necessary living expenses; and

(3) Once the maximum debt level is exceeded, default is more likely to occur.

b. FDM Calculation

(1) The FDM formula is:

\[ \text{GMI} \times \text{MAFD percent} = \text{MAFD} \]
\[ \text{MAFD} - \text{MFD} = \text{CA} \]

(2) Definitions.

(a) GMI (Gross Monthly Income). Gross annual income divided by 12.

(b) MAFD Percent (Maximum Acceptable Fixed Debt Percentage). The percentage of income which generally can be allocated for fixed debts (housing, installment and car loans, credit card or revolving charge accounts, certain extraordinary continuing expenses) without incurring undue risk. Living expenses are not considered part of fixed debt. They are included in the portion of gross income remaining after subtracting MAFD.

For SBA disaster loan purposes, the standard MAFD percent is 36 percent for GAI of $25,000 or less and 40 percent for GAI above $25,000.

(c) MAFD (Maximum Acceptable Fixed Debt). The result of the GMI x MAFD percent calculation, expressed in dollars. This amount usually represents a ceiling at which point the applicant can incur no more fixed debt without undue risk.

(d) MFD (Monthly Fixed Debt). The greater of: (1) the total amount of all continuing fixed obligations (exclusive of living expenses), or (2) 25 percent of GMI.

(e) CA (Cash Available For Additional Fixed Debt). The remainder after deducting MFD from MAFD.
(f) One-third of CA. The target payment for the disaster loan.

c. Using the Fixed Debt Method to Determine Repayment Ability.

(1) General Rule. Using the FDM, review the applicant’s income and debts to establish a maximum debt level and target loan payment that leaves sufficient cash available to meet necessary living expenses and support repayment of additional debt. The remaining cash available will determine the applicant’s ability to repay additional debt.

(A) If the standard FDM calculation results in positive CA, and the loan can be amortized within the standard loan term, the result will be used to determine the loan terms. You set the monthly payment at one-third CA, provided it amortizes the loan within 30 years using the standard deferment. Otherwise, you write a 30-year term and set the payment up to 100 percent of CA.

(B) If the standard FDM calculation results in positive CA, but will not amortize the loan within 30 years, you must consider additional options, such as refinancing (subparagraph e. below), increasing MAFD (subparagraph d. below), or a limited approval (subparagraph f. below), to determine if CA is available to repay additional debt.

(C) If CA is negative after considering all additional options, the applicant is unlikely to be able to repay additional debt, and must be declined for lack of repayment ability.

(2) Exceptions to the General Rule.

(A) Applicant Requests Payment Greater than 1/3 CA. You may grant this request if:

(i) The payment does not exceed 100 percent of CA; and

(ii) The case file clearly indicates it was at the applicant's request.

(B) Setting Payments Below 1/3 of CA. You may set the payment below 1/3 CA only in cases of no credit elsewhere and

(i) Relatively low, fixed retirement, permanent disability, or similar income; or
(ii) Relatively low income (income is expected to remain low) where there is also a clear need to devote a large share of the income to living expenses (such as for a large number of dependents or to support known unusually heavy expenses); or

(iii) Low income and low fixed debt with an anticipation that necessary fixed debt will materially increase.

Your case file must justify setting a payment below 1/3 CA.

(C) Adding $50 to the Payment. Sometimes, the general rule establishes a payment, which is less than practical for the applicant's financial condition (e.g., small loans or loans to applicants with high income). In these cases, use your discretion in setting the terms. Within the standard CA, you can add up to $50 per month to the payment to help shorten the maturity, but not merely to avoid small payment amounts. You must obtain the applicant's consent and record the conversation in the comments section.

(D) Applicant Requests a Lesser Loan Amount. In this instance you must recalculate the payment based on 1/3 CA.

d. Determination of Repayment Ability in Excess of the Maximum Debt Level

Some applicants may be able to carry more debt than the maximum debt level indicated by the standard FDM calculation. You must make this determination on a case-by-case basis.

(1) Generally, we do not consider applicants with gross annual income less than $25,000 to be able to carry monthly fixed debt in excess of 36 percent. Raising the MAFD for applicants with incomes of $25,000 or less should be rare, and requires Applications Director or designee approval.

(2) Some applicants may be able to carry more than 40 percent MAFD. You must make this determination on a case-by-case basis, and justify any such recommendation. Where a recommended loan requires the applicant to carry more than 45 percent of MAFD, it must be approved by Applications Director or designee.

(3) The applicant must have a good credit history for any consideration of increased MAFD percent.

(4) Acceptable justifications for exceeding the standard MAFD percentages:
(a) **High Income and Relatively Low Living Expenses.**

You must justify high income and low living expenses. You cannot use this justification unless both of these factors are present.

(b) **Future Income Prospects.**

This applies only to:

(i) Applicants whose earnings in their occupational field or industry are rapidly increasing; or

(ii) Applicants with excellent prospects for substantial future income increases.

(c) **Demonstrated Ability to Handle Debt.**

You can justify exceeding the standard MAFD percentage if the applicant has demonstrated the ability to devote a greater part of income to monthly fixed debts. You cannot exceed the historically demonstrated level using this justification.

(d) **Accumulation of Sizeable Net Worth.**

You can justify exceeding the standard MAFD percentage if the applicant has accumulated sizeable net worth and maintained a good credit history.

NOTE: The justifications in this subparagraph may "stand alone." You can recommend exceeding the standard MAFD percentage using any one of the reasons above, provided it is relevant and documented. However, Applications Director or designee approval is required if you recommend exceeding the standard MAFD percent for any other reasons.

e. **Limited Approval.**

You may recommend approval of a loan for less than the eligible loss due to limited repayment ability, provided that the reduced amount is sufficient to complete repairs which will render the home habitable. You should use 100 percent of available cash (CA) and specify the maximum loan term.

f. **Loan Officer's Discretion.**

The FDM is a guideline to help you determine repayment ability and terms. You must exercise your credit analysis skills, use discretion, and evaluate all information to be successful. Only your reasoned and thorough analysis of all
relevant facts can help balance prudent lending of subsidized funds and sympathetic consideration of the disaster victims' needs.

90. **LIMITED REPAYMENT ABILITY/LOSS IN EXCESS OF LENDING LIMITS (85)**

Your case file must always explain how applicants who lack the ability to repay the full amount of disaster loan eligibility, or applicants with losses in excess of the lending limits will effect viable restoration. In some instances, a disaster victim's recovery could involve SBA, FEMA, State grant, or some other organization, such as Mennonite Disaster Services.

a. When applicants sustain uninsured losses in excess of our lending limits, you must determine if the applicant can complete restoration with the SBA loan, and any other Federal, State, or local programs. If they cannot, you must determine if:

   1. The amount needed to supplement the SBA loan is available to the applicant on reasonable terms; and
   2. The applicant can repay all obligations from present and future income.

b. Under a Presidential declaration, joint assistance involving other relief agencies may be necessary to restore homeowner disaster victims with the ability to repay only part of the verified damages. You should attempt to establish some plan whereby SBA alone, or in conjunction with other disaster relief organizations, can restore all or part of the real estate and the IHP program can be used to complete and/or adequately furnish the residence to make it livable.

c. Under an SBA declaration, joint assistance with other relief agencies may be possible.

d. If a substantial shortfall exists, you must consult with the PDC Loss Verification Department to determine if a lesser loan amount will permit the victim to restore reasonable habitability.

91. **LOAN AUTHORIZATION AND AGREEMENT (LAA) (87)**

a. We issue all SBA disaster loan commitments in the form of a written LAA using SBA Form 1391. A disaster loan borrower agrees to the various terms and conditions of the loan by signing this written LAA. The general form has six variations: unsecured home, business, and EIDL; and secured home, business, and EIDL.

b. A recommendation to approve a loan is not final until the SLO approves the case file and the CCL, when applicable. Chief Legal Advisor or designee reviews all case files for secured loans for sufficiency of collateral instruments and other
legal concerns. Generally, **Chief Legal Advisor** does not review unsecured LAAs.

c. The LAA contains all terms and conditions applicable to the loan. You must not impose conditions other than as written in the LAA. Borrowers are not legally bound by any verbal term or condition.

d. In completing the case file, you must review all available standard and optional stipulations before using any custom stipulations. You only use custom stipulations when no standard or optional stipulation will suffice.

e. Custom stipulations must follow the "Borrower will" format used in all standard and optional text. **Chief Legal Advisor** or designee must review them during the legal review of the case file for clarity, legal sufficiency, and conformance with format standards.

**NOTE:** If any custom stipulation is used more than 10 times a year it must be:

1. Submitted to ODA through **Chief Legal Advisor** for adoption as a standard or optional stipulation; and

2. Cleared in accordance with statutory requirements.

f. The SLO is responsible for assuring that all stipulations are consistent with the case file, and for avoiding nonessential use of custom stipulations.

g. SBA requires loan recipients of a single loan in excess of $150,000 to execute a certification and disclosure regarding lobbying activities. In order to comply, we must include an OC-15 stipulation, Disclosure of Lobbying Activities, in the case file. The lobbying certificate must be obtained prior to any disbursement of loan proceeds. If a borrower has two or more loans from the same disaster, we do not aggregate these loan amounts to determine the $150,000 threshold.

### 92. RECONSIDERATION OF DECLINED LOAN APPLICATIONS (100)

a. **General Policy.** Declined applicants can present additional information which may overcome the reason(s) for the decline. Whenever the applicant requests a reconsideration of our previous lending decision, their case file must be assigned to a new Loan Officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.

b. **Method and Deadline for Requesting Reconsideration.** Requests must be in writing and received **within 6 months from the date of the initial decline letter.** It is not necessary for the applicant to file a new application in these cases.
c. **Late Requests.** We cannot reconsider an application if more than 6 months have elapsed since the date of the initial decline. Generally, applicants must file a new application; however, the AA/DA or designee may permit updating of the existing application in some cases.

d. **Content of Request.** The written reconsideration request must contain all significant new information (business loan applicants must include current business financial statements) which the applicant believes will overcome all the initial decline reasons. SLOs can accept these requests if the applicant complied with the terms of the decline letter.

e. **Alternate Reasons for Decline Upon Reconsideration.** The reason(s) specified in the initial decline letter does not constitute a waiver of SBA's right to decline an application upon reconsideration for other valid reasons. However, the letter should state all of the reasons for the initial decline.

f. **Only an official at the same or higher level as the official who took the final action to decline the original loan application has the authority to take final action on reconsidered applications.**

g. **Summary Decline.** A reconsideration of a summary decline is an original action because:

   (1) The applicant did not receive an application; or

   (2) The application was not formally accepted.

h. **Reconsideration of an Auto-Decline or Pre-LV Review Decline.** For reconsideration purposes, treat Auto-Decline and Pre-LV Review declines like any other original decline action.

i. **Special Provisions Applicable to Reconsidered Applications.** Applications that lack essential information after acceptance for reconsideration may be withdrawn. When a subsequent withdrawal occurs, the applicant’s deadline is the greater of the original deadline or 30 days from the date of the subsequent withdrawal.

93. **FURTHER RECONSIDERATION (APPEAL) (101)**

   a. **General Policy.** Applicants declined upon reconsideration can request further reconsideration at the next higher level. Whenever an applicant requests a further reconsideration of our previous lending decision, their case file must be assigned to a new Loan Officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.
b. **Method and Deadline for Requesting.** Requests must be in writing and received within 30 days of the date of the decline letter.

NOTE: If the decline upon reconsideration contains any new reason not previously conveyed to the applicant in the decline letter, we will extend the time frame to a total of 90 days (the standard 30 days plus an additional 60 days).

c. **Content of Request.** All requests must include the applicant's justification to reverse the prior decline action(s). If the applicant does not provide new information, you should contact the applicant to see if any is available. Using all available information, you must reprocess the case file to a decision.

d. **Finality of Review - Approvals.** The Applications Director or designee has final approval authority. The CD/PDC does not have to sign approval recommendations unless there is a split.

e. **Finality of Review - Declines.** The CD/PDC or designee has final decline authority. The CD/PDC’s decision is final unless:

   (1) The CD/PDC does not have authority to approve the loan or action; or

   (2) The CD/PDC refers the matter to the AA/DA; or

   (3) The AA/DA, upon a showing of special circumstances, requests the PDC to forward the matter to the ODA for final consideration. Special circumstances include policy reconsideration or reevaluation by other elements of the Agency, alleged improper acts by SBA personnel or others, or other considerations.

94. **SPECIAL PROVISIONS APPLICABLE TO RECONSIDERATION PROCESSING**

   (102)

You must obtain updated DOB information on all requests for reconsideration of all loan applications. This enables you to determine if the proposed loan duplicates assistance from other agencies. FEMA is the Federal point of contact for DOB information in Presidential disaster declarations. You should also check for any other assistance programs available.

95. **RECONSIDERATION OF DECLINED LOAN MODIFICATION REQUESTS**

   (103)

These requests are subject to the same policies governing declined disaster loan applications.
96. **RECONSIDERATION OF REFUSAL TO CLASSIFY APPLICANT AS MAJOR SOURCE OF EMPLOYMENT (MSE) (104)**

Applicants initially declined for MSE classification are subject to different reconsideration rights.

a. The applicant must provide written support for its contention that it meets one of the three employment criteria in subparagraph 67 a.

b. The Applications Director will reconsider the prior determination in light of the applicant's statements, document the recommendation, and forward the case file to the CD/PDC.

c. The CD/PDC must:

   (1) Take final action on recommendations not to classify an applicant as an MSE; or

   (2) Forward the case file to the AA/DA for approval of MSE status.

97. **RECONSIDERATION OF DECLINE FOR EXCEEDING APPLICABLE SIZE STANDARDS (105)**

Size standards apply to eligibility of EIDL applicants only. Applications initially declined for size are subject to different reconsideration rights.

a. Initial (informal) size decline actions are taken at the SLO level.

b. Following an initial (informal) size decline the applicant may request a formal size determination. The applicant must submit an SBA Form 355, "Application for Small Business Size Determination," with the request. There is no time limitation for making a formal size determination for purposes of financial assistance [13 CFR §121.303(e)].

c. Formal size decline actions are taken by the CD/PDC or designee.

d. Following a formal decline for size, the applicant may petition the Office of Hearings and Appeals (OHA) in Washington, D.C. The appeal petition must be served and filed within 30 days after receipt of the formal size determination decline letter [13 CFR §134.304(a)(2)].

e. Size determinations do not count as "actions" for purposes of the reconsideration and appeal process.
98. **REACCEPTANCE OF WITHDRAWN APPLICATIONS** (106)

a. **General Policy.** Applicants can request reacceptance of withdrawn applications.

b. **Types of Withdrawal Actions.** Withdrawal actions result from:

(1) SBA action (including case file consolidation); or

(2) Applicant's request.

c. **Method and Deadline for Requesting.** Generally, requests must be in writing, and received within 6 months from the date of the withdrawal. Verbal requests may be granted on a case-by-case basis with justification in the chron log.

d. **Content of Request.** When applicable, the applicant must provide all information specified in our withdrawal letter. When we initiate the withdrawal, the applicant must also show that:

(1) Our action was in error; or

(2) The withdrawal resulted from causes beyond the applicant's control.

e. **Late Requests.** We cannot reaccept an application if more than 6 months have elapsed since the date of the withdrawal. Generally, applicants must file a new application; however, the AA/DA or designee may permit updating of the existing application in some cases.

   You must obtain current financial and credit information before processing the application (see subparagraph 92.c.).

f. **Special Provisions Applicable to Reaccepted Applications.**

(1) We do not reaccept applications without reasonable assurance we can make a loan decision with the new information. This avoids withdrawing an application a second time.

(2) Applications that lack essential information after reacceptance may again be withdrawn. When a subsequent withdrawal occurs, the applicant's deadline is the greater of the original deadline or 30 days from the date of the subsequent withdrawal.

99. **CONFIDENTIAL INFORMATION** (9)

a. **Agency Actions.**
(1) Disaster employees must not reveal to the applicant/borrower or the applicant/borrower's representative, the name, title, or recommendation of any SBA employee or official who was involved in any action leading to an Agency decision.

(2) We will only disclose the Agency's decision. However, upon applicant/borrower's specific oral or written request, we can reveal the name and title of the person who signed the final action.

b. SBA Employees to Deal Only With Authorized Representatives.

SBA applications require a listing of anyone retained by an applicant as their SBA representative, and the compensation to be paid. You may only discuss a case with an applicant or their authorized representative as named in the application or authorized in a letter signed by the applicant.

100. RESERVED

101. RESERVED
CHAPTER 9
TERMS AND CONDITIONS

102. INTEREST RATES (46)

a. General Principal.

The Small Business Act requires us to determine if credit is available elsewhere before we assign an interest rate. The Credit Elsewhere Test (CET) measures the applicant's ability to address the disaster loss from available resources or to obtain credit from non-Federal sources at reasonable rates and terms. If the CET results in a finding that credit is available elsewhere, the market (higher) interest rate applies.

The LO must review the underlying financial information to ensure that it information is accurate and consistent with the application, and not artificially inflated.

b. Determination of Hardship.

When an application meets the criteria for Credit Available Elsewhere, the Loan Officer must determine whether the assignment of the market rate will result in a repayment amount that will cause the applicant undue financial hardship. When appropriate, a hardship waiver may be granted. In considering a hardship waiver, the LO should consider the totality of circumstances affecting the overall financial situation of the applicant (including principals and affiliates in the case of business loans). A hardship waiver must be justified in the case file and approved by the SLO.

NOTE: Applications Director or designee approval is required for any loan modification action that changes the interest rate from below market rate to market rate.

c. Determination of Interest Rate. Each disaster declaration specifies the interest rates applicable for all loans processed under that disaster declaration.

(1) Home Loans. The Small Business Act requires the use of a formula for setting the credit available elsewhere interest rate for home loans. The below market rate applies to homeowners with no credit available elsewhere (NCE), and the market rate applies to homeowners with credit available elsewhere (CE).

(2) Business Physical Loans. Similarly, the statute contains a requirement for setting the credit available elsewhere interest rate for business loans. The
below market rate applies to businesses with no credit available elsewhere (NCE), and the market rate applies to businesses with credit available elsewhere (CE).

(a) When an application is determined to have Credit Available Elsewhere, a maximum 3-year term applies.

(b) We must consider the applicant, its owners or principals, and its affiliates. Principal and affiliate information is incorporated into the ratio analysis based on the percentage of ownership or affiliation. Individuals/legal entities with less than 20% ownership may be excluded. Business concerns with less than 50% affiliation may be excluded. Subsidiaries of the applicant are included based on the percent of ownership the applicant has in the subsidiary.

(3) Nonprofit Organization Loans. The statute contains a requirement for setting the credit available elsewhere interest rate for private nonprofit, eleemosynary, cooperative, religious, and similar organizations and institutions.

Use the Business CET to determine the rate for nonprofit organizations. Nonprofit organizations determined to have Credit Available Elsewhere are not subject to the maximum 3-year term.

(4) Economic Injury Loans. By statute, we can authorize EIDLs only at the business NCE interest rate. EIDL applicants determined to have credit available elsewhere are ineligible for EIDL disaster assistance.

(5) MREIDL Loans. The published interest rate which will be assigned to MREIDL loans changes quarterly. However, once the appropriate interest rate is assigned to a MREIDL loan at the time of approval, it remains fixed. The interest rate to be applied to any MREIDL loan is SBA’s published EIDL interest rate at the time the MREIDL application is APPROVED. For MREIDLs only, the date of approval is the date the appropriate approving official concurs with the processing Loan Officer’s recommendation.

103. LOAN TERMS, INSTALLMENT PAYMENT AMOUNTS (47, 128)

a. General Principle. You determine the installment payment amount based upon the applicant's ability to repay. First you establish the installment payment amount and then you set the term in accordance with that amount.

b. Maximum Term.

(1) The maximum term of disaster loans is 30 years.
(2) For businesses able to obtain credit elsewhere, the maximum term is 3 years.

(3) For private nonprofit, eleemosynary, religious, cooperative, and similar institutions able to obtain credit elsewhere, the maximum term is 30 years.

c. Establishing the Term.

(1) You are responsible for an independent evaluation of the applicant's ability to repay. You should not base payment amounts and terms solely on an applicant's request.

(2) For home loans, the Fixed Debt Method (paragraph 89) provides the method for analyzing and justifying payment amounts and terms.

(3) For business loans, base the loan term on the target payment (see subparagraph 103.j.(3)).

(4) For EIDLs, base the loan payment upon the applicant's ability to repay the loan. However, when a significant portion of the loan amount is based upon frozen inventory or receivables, a shorter term may be appropriate because the applicant's cash flow will improve as the inventory or receivables are converted to cash. The shorter term would not be appropriate if the injury resulted from inventory which became obsolete or accounts which were charged-off.

d. Equal Installment Payments. Normally, disaster loans are repaid in equal monthly installment payments of principal and interest which fully amortize the loan amount and the interest accrued during the initial deferment period within the loan term (see subparagraph g. below).

e. Exceptions to Equal Installment Payments.

(1) Occasionally, it may be appropriate to approve a loan with reduced initial installment payments and larger installment payments thereafter.

(a) This usually occurs when an applicant will pay off a significant fixed debt within the first two years of the loan, and that debt is unlikely to recur, such as a mortgage or a one-time loan.

(b) Recommendations for reduced initial payments must be justified in the case file, subject to the following:
(i) You must restrict the initial installment payment amount to not more than two years, after which the full (permanent) installment payment amount is required;

(ii) We can permit only two payment amounts (initial and permanent). This restriction does not govern changes which may become necessary during the closing, disbursing, and servicing processes; and

(iii) Generally, the initial payment amount should at least cover accruing interest. This avoids an accrual of deferred interest requiring an unreasonably large permanent payment amount to amortize within the term.

(2) Balloon payments are prohibited.

f. Frequency of Installment Payments. You must justify any exception to monthly payments in the case file. However, when an applicant receives income on a seasonal or annual basis, you may arrange the repayment schedule to provide for quarterly, semi-annual, or annual payments.

g. First Payment Due Date.

(1) The first payment due date is 5 months from the date of the Note. This reflects a standard deferment of 4 months. It recognizes that disbursements are seldom completed on the Note date, and that disaster recovery is seldom accomplished immediately upon obligating.

(2) In some instances you may need to defer the first payment due date longer than 5 months from the date of the Note. For example:

(a) For Physical Loans, when the construction/major repair will take a protracted period, the borrower may be unable to make full payments until the project is substantially completed.

(b) For EIDL loans.

(1) There is major damage involving lengthy repairs; or

(2) The injury period extends more than 5 months into the future; or

(3) The due date is at a low point in the applicant's business cycle (e.g., if the applicant does snow removal work, and has little cash flow during the summer months, payments should not begin until cash flow resumes).
In these cases, the first payment due date may be set more than 5 months from the date of the Note if you justify the need in the case file. Use this provision with caution and only to address clear needs. Be aware that the interest accrual during these deferment periods can be significant, and may result in substantially higher installment payments to amortize the loan within the term. **Approval authority for these deferments is limited as follows:**

(a) First payments due up to and including 24 months from the date of the Note require SLO approval, provided there have been no disbursements on the loan. An SLO can approve deferments up to 12 months if there has been at least one disbursement.

(b) If there has been at least one disbursement, the Applications Director or Accounts Manager or designee can defer the first payment beyond 12 months, up to and including 2 years from the date of the Note; and

(c) First payments due more than 2 years from the date of the Note require the CD/PDC’s recommendation. The AA/DA or designee must approve these requests.

(d) MREIDLs: Generally, the first payment for MREIDL loans only will be due 15 months from the date of the note. The SLO is authorized to approve this deferment. Any further deferrals are subject to the approval authority limitations in subparagraph 103 (g)(2) above.

**NOTE:** By law, the first payment for a MREIDL must be deferred to the later of: 1) 1 year from the date of the initial disbursement, or 2) the period during which the essential employee is on active duty. SBA’s standard MREIDL deferment exceeds the statutory deferment. Even so, the loan terms must be reviewed before initial disbursement to assure that both statutory requirements have been met. If necessary, the deferment should be extended to bring the loan into compliance with the statutory deferment.

h. **Payments are Fixed Amounts in Whole Dollars.**

(1) You must express all installment payments as a fixed number of dollars, rather than "principal and interest" or "interest only" or other descriptions.
(2) You must round all installment payments up to the next whole dollar to accommodate automated collection facilities.

i. Terms in Whole Months or Years. You must write initial loan terms in whole months or years. You round up to the next month or year as follows:

(1) Write loan terms of less than 1 year, in whole months (e.g., 9 months);

(2) Write loan terms of less than 3 years in years and whole months (e.g., 2 years 7 months);

(3) Write loan terms of 3 years or more in whole years; and

(4) If you modify a loan, the resulting term will not usually be a whole year. In these cases, you write the modified term for the next higher whole month, even if the loan term is 3 years or longer.

j. Calculating Payment Amounts and Loan Maturities.

(1) Accrued Interest. You must account for the interest accrued during the initial deferment period when you set the loan term. Every loan has at least a 4 month deferment.

(2) Home Loans. For home loans, determine a reasonable amount for the borrower to pay for each monthly installment. Generally, you should base the target payment at 1/3 of TOTAL CA (cash available). You must justify the payment if you use an amount other than the target payment.

(3) Business Loans. For business loans, determine a reasonable amount for the borrower to pay for each monthly (or other) installment. Generally, you should base the target payment at 1/3 of TOTAL CASAD (cash available to service additional debt). You must justify the payment if you use an amount other than the target payment.

(4) The above calculations are made only for administrative convenience to determine the payment amount. If a borrower questions the methodology, you should emphasize that the promissory Note specifies that payments will first be applied to the interest accrued before any portion of payments will be applied to principal. The loan is a simple interest loan, and the SBA loan accounting system does not charge interest on interest.

k. Special Provisions Applicable to Private Colleges and Universities. The Small Business Act provides authority to waive interest for the first three years and to defer principal payments for the first three years of the term of a disaster loan to a private college or university in Presidential declarations. Only the AA/DA can approve these deferments.
104. **COLLATERAL REQUIREMENTS** (48, 129)

   a. **General Policy.** The law does not require collateral on disaster loans. However, SBA policy establishes collateral requirements based on a balance between protection of the Agency’s interest as a creditor and as a provider of disaster assistance.

   b. **Unsecured Loan Limit.**

      (1) **The Limit for Unsecured Physical Disaster Loans (Home and Business) is $14,000.** The law (Section 7(d)(6), Small Business Act) prohibits requiring collateral on physical disaster loans of $14,000 or less at the time of approval. However, we can accept security when the applicant voluntarily offers collateral on physical disaster loans of $14,000 or less. For example, an applicant may wish to take advantage of the mortgage interest deduction for tax purposes, and may freely offer the property as security. In these cases we would accept security for the loan which would otherwise be unsecured. Never suggest collateralizing an otherwise unsecured loan with an applicant. You must always document the applicant’s unsolicited offer.

      (2) **Unsecured and Secured EIDL Loan Limits.** You must secure any EIDL in excess of $5,000.

         (a) You may secure EIDLs of $5,000 or less only if the applicant voluntarily offers collateral (generally for tax purposes). In these cases, you must document in the case file that you did not require or solicit an offer of collateral, but the borrower voluntarily offered it.

         (b) If more than one EIDL is made to the same borrower (including its affiliates) for the same disaster, aggregate the loans. **You must secure each loan if the aggregate amount is more than $5,000.**

   (3) **When making multiple disaster loans to the same borrower (or affiliated group), apply the following guidelines.**

      (a) You must separately aggregate the amount of all physical loans from all economic injury disaster loans to the same borrower (and its affiliates) from the same disaster declaration (e.g., home loan and business loan, or two loans to two affiliated businesses). If the aggregate amount of the physical loans is more than $14,000, each of the loans must be secured. If the aggregate amount of the EIDLs is more than $5,000, each of the loans must be secured. If
the aggregate amount of the physical loans is $14,000 or less or the EIDLs is $5,000 or less, you cannot require collateral.

NOTE: Do not aggregate the amounts of the physical loan(s) and EIDL loan(s) to determine if collateral is required. It is possible to have a secured physical loan and an unsecured EIDL companion loan or vice versa. Example: Home loan in the amount of $100,000 and unsecured companion EIDL of $5,000.

(b) You must aggregate disaster loans from the same disaster event in multiple jurisdictions (e.g., states) even if we issue a separate disaster declaration in each jurisdiction.

(c) Do not aggregate disaster loans with outstanding loans to the same borrower (and affiliates) from prior disasters.

(d) The rule about not combining borrowers in subparagraph 66.c. for purposes of applying loan eligibility limits does not apply to collateral considerations, which are a credit matter.

(4) Collateral Issues for EIDL Loans.

(a) There is no change to our standard collateral requirements with a B/E loan. The loan is unsecured when the physical loan amount does not exceed $14,000 and the EIDL amount does not exceed $5,000. You do not aggregate the physical and EIDL loan amounts to determine if collateral is required. For example, a B/E loan for $14,000 ($10,500 physical and $3,500 EIDL) does not require collateral, but a B/E loan of $14,000 ($7,500 physical and $6,500 EIDL) does require collateral. In addition, companion loans that in aggregate exceed the physical or EIDL unsecured threshold require collateral. For example, a companion home loan for $10,000 will require collateral if the companion B/E loan has over $4,000 in Physical funds or over $5,000 in EIDL funds.

(b) If the business physical loan is a decline or withdrawal and only the EIDL is approved, the unsecured threshold is $5,000.

(c) If the EIDL is declined or withdrawn and only the physical loan is approved, the unsecured threshold is $14,000.

c. Secured Loan Limit. All loans exceeding the unsecured loan limit require collateral.
Determine what collateral is available, and take that collateral which will best secure each loan. **Real estate is the preferred form of collateral.** When an applicant offers certain collateral, SBA will attempt to honor the applicant's preferences, but only to the extent that doing so will secure the loan at least as well as taking other available collateral not offered. Substituting business contents or personal property for real estate does not secure the loan as well as taking the available real estate and should not be considered. Where a conflict exists between the collateral available and offered, our determination is final.

We will not decline an application if the available collateral does not adequately secure the full loan amount. However, an applicant's refusal to pledge available collateral is grounds for declining a loan application or canceling an approved loan.

Generally, collateral is adequate if the equity is at least 100 percent of the loan amount.

Generally, we will not require an applicant to pledge more collateral than is necessary to adequately secure a loan.

Consistent with the above criteria, we would take the damaged or replacement property for collateral. However, to avoid unnecessary paperwork or excessive collateral, it may be appropriate to do otherwise. For example, if an applicant owns two real estate parcels, one damaged and one not damaged, where the equity in the damaged property is insufficient to secure the loan, but the equity in the non-damaged property is sufficient, we prefer to fully secure the loan with a lien on the non-damaged property and avoid taking another lien on the damaged property. Otherwise, the usual practice is to require a lien on the damaged property, and because that is insufficient to secure the loan, to require another lien on the non-damaged property. For insurance requirements, see paragraph 106.

The Loan Officer determines FMV and equity for the non-damaged replacement collateral property based upon information from various sources.

d. **Special Provisions for Secured Home Loans.** Real estate [including manufactured housing (MH)] is always the preferred form of collateral to secure a home loan, even if the equity in the RE or MH is insufficient to secure the full loan amount. Take personal property as collateral only if the applicant owns no real property and if the PP is valuable or unique, such as boats, RVs, etc.
If the applicant is self-employed (e.g., a sole proprietorship or the sole owner of a corporation, LLC, or other entity), you must also take tangible business assets to the degree necessary to make up the lack of equity in the real estate.

e. Special Provisions for Secured Business and EIDL Loans. Real estate is always the preferred form of collateral to secure business and EIDL loans. If RE is unavailable or inadequate, other fixed assets, such as M&E, are usually preferred to inventory or accounts receivable as collateral. If there is not any RE damage but real property is available as collateral, we will require a lien on that property. An applicant's refusal to pledge available preferred collateral (e.g., RE) is a basis for declining an application or canceling a loan even if other non-preferred collateral property may be sufficient to secure the loan.

f. Special Provision for Collateral from Business Tenants. If the existing lease (including renewal options) is shorter than the recommended loan term, the existing lease generally should be extended to "cover" the loan term, and assigned to SBA with right of reassignment (see paragraph 111). If the applicant prefers, other collateral acceptable to SBA may be substituted and we can waive extension and assignment of the lease.

g. Special Provisions for Secured Loans to Associations. Certain special collateral requirements apply to associations. Generally, our basic approach is the following.

(1) Require a special assessment, approved by the general membership, with a binding assignment thereof. (The association's general membership shall pass a special assessment according to its governing documents.) The Chief Legal Advisor or designee will prepare the assessment as follows:

(a) It will be in an amount sufficient to fully amortize this loan in accordance with the payment terms as stated in the LAA.

(b) It will refer to and adopt all of the terms and conditions of the LAA, and provide that the proceeds of the special assessment will be used solely to amortize the loan.

(c) It will be irrevocable until the SBA loan is paid in full.

(d) It will require the association to assign the proceeds of the assessment to SBA as collateral for the loan.

(2) Require a mortgage or deed of trust on the common areas owned by the association, where permitted by law.

h. Prior Liens and Other Creditors. Applicants often have prior liens on the collateral property. We should make the most favorable arrangement possible
with other creditors and prior lien holders. Banks and other creditors are frequently unwilling or legally prohibited from subordinating their liens to a disaster loan. With respect to prior lien holders you should consider the following.

1. **SBA requires** that borrowers agree not to accept future advances (in excess of the recognized lien amount in the LAA) under any superior lien on the collateral without the prior written permission of SBA. Sometimes, **more restrictive** requirements may be appropriate especially when the collateral secures an open line of credit.

2. If the collateral is located in a "non-notice" state, we will send a letter to the senior lien holder(s) requesting advance notice of any foreclosure actions against the borrower. Prior to disbursement in excess of the secured threshold, it may be appropriate to obtain a specific agreement by the prior lien holder to provide this notice in advance of foreclosure (consult with **Chief Legal Advisor** or designee). In such cases, you must justify the requirement in the case file, and incorporate the appropriate stipulation in the LAA.

i. **Comparative Value of Lien and Equity Position.** If the applicant elects not to directly repair or replace the disaster damaged property, you must consider the comparative value of our lien and equity position. As a general rule, if we accommodate the applicant (such as involuntary or voluntary relocation, applicant-funded improvements, alternate use of eligibility, etc.) our lien and equity position must be at least as good as it would have been had only the damaged or destroyed property been repaired or replaced and a lien placed on it.

   1. Collateral value is not merely a matter of the priority of lien position. You must also consider the value of the lien for each alternative.

   2. We will consider our collateral position to be as good in any case where the loan is sufficiently collateralized by the lien after accommodating the borrower, regardless of the priority of the lien position. You must justify any exception in the case file.

j. **Collateral Appraisals.** Formal appraisals, although rare, may occasionally be appropriate. This might arise in very large loans, especially MSE loans. Formal appraisals are performed by professional, licensed public appraisers. The Applications Director or higher must approve requests for formal appraisals.

k. **Relocation of Disaster Victims.** Refer to subparagraph 60.h.(1) for guidance on treatment of prior liens on properties involved with relocation.

l. **Widely Scattered Collateral.** When the damage is to property which is dispersed across a wide geographic area (e.g., billboards and vending machines), or when
an applicant offers this type of property as collateral, the cost of obtaining hazard insurance coverage may be prohibitive. In these cases you should consider alternative collateral on which appropriate insurance can be obtained at reasonable cost.

m. Release/Retention of Collateral. When we reduce a loan to an amount below the secured threshold, we are not compelled to release the collateral. Whether or not to release the collateral upon request must be based upon prudent credit judgment and must be justified in the case file.

n. Non-applicant Owners. Sometimes, not all owners are applicants. This may arise among family members due to inheritance provisions, life estates, estranged spouses, etc. In these cases, we generally require the non-applicant owner to execute our mortgage/deed of trust.

105. GUARANTEE REQUIREMENTS (49)

a. Definitions.

(1) To guarantee is to assume responsibility for payment of a debt if the person(s) or concern primarily liable fails to perform.

(2) A guarantee is the actual written agreement by which one assumes responsibility for ensuring payment of the debt or obligation of another.

(3) A guarantor is the one who makes or gives the guarantee.

(4) A principal, for purposes of this paragraph, means:

(a) For sole proprietorships, the proprietor;

(b) For General Partnerships, all general partners;

(c) For Limited Partnerships, all general partners and any limited partner who owns 20 percent or more of the partnership;

(d) For Limited Liability Entities, the Manager/Managing Member(s) and any member who owns 20 percent or more of the entity;

(e) For corporations, any individual or legal entity who owns 20 percent or more of the voting stock.

NOTE: Only individuals and legal entities with 20 percent or more ownership are considered principals for guarantee purposes.

(f) Some individuals who do not meet the definition of a principal may be in the controlling group, and the guarantee requirement applies. For example, this may occur in a family owned business, where several members of the same family own less than 20
percent of a business, but together form a controlling group. SBA
determines the composition of the controlling group on a case-by-
case basis. (See 13 CFR §121.103(a)).

b. Business Loans. Generally, we require all the principals to provide a blanket
guarantee of the loan (except in cases of sole proprietorships or when principals
are included as co-borrowers). Depending on the adequacy of the collateral
owned by the business, guarantees can be secured or unsecured. The guarantees
of the principals are not a substitute for business collateral. They are a safeguard
to protect our position. Refusal of a principal to provide a guarantee is a basis for
denying an application or canceling a loan.

(1) Unsecured Guarantees. If the business can adequately secure the loan
with real estate, the guarantees of the principals should generally be
unsecured.

(2) Secured Guarantees. If the business does not have adequate equity in the
real estate to fully secure the loan, the guarantees of the principals should
generally be secured (even if the business has M&E, etc., which was also
taken). However, if one or more principal(s)’s collateral is enough to
secure the loan, you may require unsecured guarantees from the other(s).
This option should only be considered if all guarantors/principals are in
agreement with such an arrangement.

(3) Limited Guarantees. In some situations a limited guarantee may be
appropriate. A limited guarantee may be unsecured or secured with either
a limit to the maximum amount of a guarantee, or a limit to the
 guarantor’s interest in collateral, or a limit to a percentage of the unpaid
balance.

c. Home Loans. Guarantees are not ordinarily necessary for home loans. However,
sometimes all owners are not applicants. This may arise among family members
due to inheritance provisions, life estates, or estranged spouses, etc. In these
cases, we generally require the non-applicant owner to execute our mortgage/deed
of trust. In some states and territories, this policy is not legally sufficient to
perfect our lien. Therefore, a guarantee, secured by and limited to their interest
in the collateral property, may be appropriate. See paragraph 104 (d) for other
examples.

106. HAZARD/OTHER INSURANCE REQUIREMENTS (50)

a. General Requirements. We require hazard insurance on all secured loans to
protect both the damaged property (real property and contents) and all insurable
collateral.

(1) Damaged Property Location - Real Estate and/or Contents insurance
should be required unless it is owned by another party (for example,
property leased to another unaffiliated person/concern). Contents
insurance is required on personal property loans over $14,000, whether or not collateral is available.

(2) Collateral Property - Hazard insurance should be required on all collateral property regardless of type of collateral. (Contents insurance is not required on undamaged collateral property where we have no collateral interest in the contents.)

b. If hazard insurance is not in place or does not adequately cover the structure, materials and equipment during the repairs then a course of construction policy (such as a Builder’s Risk Policy) may be accepted in lieu of hazard insurance until the hazard policy will provide the required coverage.

c. Inventory Insurance Requirement. Even if inventory is not taken as collateral, we must require business borrowers to insure all inventory if it represents an important source of income generation.

d. Type of Insurance Coverage Required. Generally, required hazard insurance includes fire, lightning, and extended coverage. Hazard insurance must include coverage for the peril that caused the damage and the peril for which the disaster was declared. The CD/PDC or designee may waive this requirement after taking into consideration the common practices of the mortgage lenders in the disaster area. To make this determination the CD/PDC or designee should check the requirements of the three largest mortgage lenders in the disaster area.

e. Amount and Terms of Coverage Required. Generally, borrowers must furnish hazard insurance equal to at least 80 percent of the insurable value of the property to be insured. Insurance required on collateral must name SBA's servicing office as mortgagee or loss payee.

f. Evidence of Coverage Required. Borrowers must provide proof of required insurance coverage prior to disbursement of loan funds in excess of the unsecured threshold.

g. Loan Stipulations. Borrowers must maintain the stipulated coverage throughout the entire term of the loan even if the loan has been sold to a third party.

h. Business Interruption Insurance. We do not generally require an EIDL recipient to purchase business interruption insurance as a condition of loan approval.

107. FLOOD INSURANCE REQUIREMENTS (51)

a. Definitions (for this paragraph).


(2) FIA. The Federal Insurance Administration, a part of the Federal Emergency Management Agency.

(3) NFIP. The National Flood Insurance Program authorized by the Act and administered by FIA. The NFIP includes an insurance program for indemnification against flood property damage, and stipulations for
community participation which are intended to minimize future flood losses.

(4) **SFHA.** An officially designated and defined Special Flood Hazard Area. These areas are designated on flood hazard boundary maps. The SFHAs normally mean the A zones which indicate the area in the 100-year floodplain.

(5) **Construction.** Defined by the regulations based on the Act to include the "acquisition, construction, reconstruction, repair, or improvement of any building or mobile home on a foundation, and any machinery, equipment, inventory, fixtures, or furnishings, contained or to be contained therein."

(6) **Flood Hazard Boundary Map.** A map published by FIA indicating the boundaries of SFHAs.

(7) **Flood Hazard Boundary Map Effective Date.** The date a flood hazard boundary map became effective.

(8) **Participating Community.** A community which is participating in the NFIP by adhering to FIA/FEMA flood mitigation standards.

(9) **Nonparticipating Community.** A community which is not participating in the NFIP and in which NFIP flood insurance coverage is not available. A nonparticipating community may be under sanction (see definition below), which has important consequences.

(10) **Community Under Sanction.** A community the FIA has acted to sanction for failure to meet the requirements of NFIP and in which NFIP flood insurance is not available. This includes communities which are nonparticipating after one year has elapsed since the flood hazard boundary map effective date (since SFHAs were formally identified within the community), or a community which has withdrawn from or failed to adopt or adhere to NFIP requirements.

(11) **Insurable Property.** Property which can be insured under a standard NFIP flood insurance policy.

(12) **Uninsurable Property.** Property which cannot be covered under a standard NFIP flood insurance policy (e.g., unimproved land, gas and liquid storage tanks, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, motor vehicles, leasehold improvements (LHI), and certain contents of basements). Whether property is insurable is unrelated to eligibility. Some uninsurable property (e.g., crops and livestock or property in the CBRS) is not eligible, while other uninsurable
property (e.g., some motor vehicles, LHI, or some contents of basements) is eligible.

b. Determination of Location in a SFHA. We are required to make a good faith determination whether a property is located within a SFHA. The determination is made by an authorized SBA employee or an SBA contractor and is a permanent part of the case file. Letters from real estate or insurance agents or other parties are not acceptable substitutes for our determination based on the maps.

c. Contested Location in a SFHA. SBA must inform an applicant/borrower, in writing, that, if they disagree with our determination, they may submit evidence directly to FEMA (include the appropriate office address) that the property is safe from the base flood. If FEMA provides a letter stating that the property is not in a SFHA, we may remove the flood insurance stipulation.

d. Flood Zone Determination on Relocation Property.

(1) When relocation property is known, we base the SFHA determination on the relocation site. If not known, we base it on the damaged property location until the relocation property is known.

(2) When the relocation site is temporary, such as during reconstruction of the permanent site, we must determine whether any loan proceeds will be used toward property stored or used in that location, or whether any of our collateral property will be at that location. If either situation exists, we must make a determination for both the temporary site and the damaged site.

(3) If we learn at any time while in possession of a borrower's case file that the borrower has moved, we must make a new determination.

e. Property Partially Located in an SFHA.

When only a portion of a property is in an SFHA, we consider the property to be located within the SFHA and subject to the flood insurance requirement. An exception to this rule occurs when the entire portion of the property located within the SFHA is uninsurable, and all the insurable property is located outside the boundary of the SFHA. In these cases, the property is considered as not in an SFHA.

f. Property Subject to Flood Insurance Requirement. We require flood insurance on the real estate, contents and any other improvement which can be insured:

(1) For a homeowner, the property subject to the flood insurance requirement includes the residence, contents (personal property), and appurtenant structures;

(2) For a residential tenant, the property is the contents (personal property);
(3) For a business which operates in its own building, the property is the building, contents, and appurtenant structures; and

(4) For a business which operates in a leased location, the property is the business contents. When the borrower owns the structure on leased land we will require the borrower to obtain flood insurance on the leasehold improvements.

g. Statutory Requirements for Property Located in an SFHA. The Act requires that, as a condition of any Federal assistance secured by improved real estate (or a manufactured home) located in an SFHA, the building and any personal property securing the loan must be covered by flood insurance before any loan disbursement. Additionally, any loan used for construction purposes in an SFHA is subject to this requirement. Specific provisions govern certain circumstances, as follows.

(1) If the property is located in a SFHA Zone A or V in a community under sanction, flood insurance is not available and applicants cannot meet the statutory requirement. Therefore, such applicants are ineligible. This bar applies even if the property is wholly uninsurable. However, applicants who relocate to a participating community will be able to meet the statutory requirement and are eligible. Similarly, applicants who relocate to a site not in an SFHA (whether or not in a community under sanction) are not subject to the statutory flood insurance requirement. You must require a notice of disqualification for all relocations from SFHA A or V in a sanctioned community (see subparagraph 60.h.(2)(c) & (d)).

(2) We may encounter a nonparticipating community where less than one year has elapsed since the flood hazard boundary map effective date. Although NFIP flood insurance is not yet available, these communities are not under sanction and loans may be approved to applicants in these communities without a statutory or regulatory requirement to obtain flood insurance. These loans must be approved within one year of the flood hazard boundary map effective date. The date of the loan approval (obligation of funds) governs whether this exception applies. Neither the date of the disaster nor the date of the application is relevant.

(3) If the property is wholly uninsurable (e.g., a driveway and bulkhead on otherwise unimproved land), do not require flood insurance. If there is a question of insurability, refer to the General Property Form of the Standard Flood Insurance Policy. If evidence is submitted to show uninsurability, the stipulation has been satisfied because the borrower has obtained the maximum coverage available, which is none, and need not be removed by loan modification action.

h. Amount of Coverage Required By Law.

(1) SBA requires that flood insurance coverage be in an amount equal to the insurable value of the property (real property and contents) or the
maximum coverage available, whichever is less. Neither the statutory nor the regulatory requirements apply to property not located in an SFHA, regardless of whether in a community under sanction or a nonparticipating community.

(2) If flood insurance is required by the Act and the regulations, you must include the standard flood insurance stipulation in the LAA.

i. **Amount of Coverage for Secured Loans Required By Policy.**

(1) **Physical Loans:**

(a) If flood insurance is not required by the Flood Disaster Protection Act of 1973 (as amended), SBA will require flood insurance (without further justification) on the real and personal property as a matter of policy when:

(1) Rising water caused the flooding. However, flood insurance is not required if the cause of the flooding would not have been covered by NFIP flood insurance, e.g., groundwater seepage or sewer backup (unless these are part of general flooding in the area that also involves this applicant), runoff or channeled water (unless the surface flooding in the flooded area was caused by runoff or channeled water) or wind driven water (e.g., where gale force winds damage a roof or blow out windows permitting rain water to cause damage inside the structure); and

(2) The flooding caused damage to insurable real property and/or contents (including basements of insurable structures); and

(3) The borrower owns the real property that has been damaged by the flood or is responsible for making repairs to the damaged property.

(b) If the flood damaged property is not taken as collateral, the damaged property must still be covered by flood insurance.

(c) The amount of coverage will be the lesser of 1) the total of the disaster loan, 2) FMV of the disaster damaged property, or 3) the maximum insurance available.

(2) **EIDL Loans.** If the business location is not taken as collateral, but is in an SFHA or has been repeatedly flooded, we must require flood insurance for credit reasons. Generally, the amount of coverage will be the lesser of the loan amount or the maximum insurance available.
If the flood insurance would be required under this subparagraph but the applicant is not able to obtain the insurance because the property is in an unmapped or sanctioned community, you can delete the standard flood insurance clause in the LAA. You must justify this deletion in the case file.

**Flood Insurance Coverage for Other Loans.** If the disaster-damaged property, is not located in an SFHA, but is subject to risk of flood loss (e.g., the loan is to repair flood damage, such as M&E, etc., or the property has been repeatedly flooded), we may require flood insurance in situations other than as described above. You must justify this requirement in the case file. Generally, the amount of coverage will be the lesser of the loan amount, the FMV of the disaster damaged property or the maximum insurance available.

**Alternatives to National Flood Insurance Coverage.**

1. Insurance coverage for flood losses from carriers other than NFIP is an acceptable alternative, provided the community where the property is located is participating in NFIP. The coverage must:
   a. Be a standard NFIP flood insurance policy, and be issued by an insurer licensed to do business where the property is located; and
   b. Include an endorsement that the insurer must give 30 days’ notice of cancellation for non renewal to the insured and SBA, and include information on NFIP in that notice; and
   c. Guarantee that coverage is at least as broad as offered by the standard NFIP flood insurance policy and contains a mortgage interest clause similar to the one in the standard NFIP flood insurance policy.

2. Insurance coverage for flood losses from carriers other than NFIP is not permitted if the community where the property is located is not participating in NFIP.

**Evidence of Purchase of Required Flood Insurance Coverage.** The LAA requires the borrower to submit evidence of the purchase of the required flood insurance coverage to SBA prior to any disbursement for flood insurance required by law, or prior to a disbursement in excess of the unsecured threshold for flood insurance required by policy. Evidence means a copy of the issued policy or other proof of the coverage obtained. A copy of application for insurance is not acceptable unless the borrower submits proof of payment.

**Consequence of Failure to Maintain Required Flood Insurance Coverage.**

1. Applicants who were under a Federal requirement to maintain flood insurance on disaster or other loans and failed to do so are not eligible for SBA assistance. This includes applicants located in an SFHA who obtained a mortgage from a federally insured lender in 1994 or later. This applies to non-flood disasters and to flood damage in excess of the flood
insurance coverage the applicant should have maintained on the property(s).

Exception: A loan approval can be recommended if the applicant is located in an SFHA and can demonstrate:

(a) The lender did not provide the borrower with information on the flood insurance requirement; or,

(b) The lender incorrectly informed the applicant that the damaged property was not located in an SFHA.

NOTE: There may be rare cases where the applicant(s)/principal(s) signed as a guarantor only on an existing Federal loan. In these cases, a loan approval can be recommended if the applicant(s)/principal(s) can fully document they did not have the control to maintain the required insurance.

(2) The National Flood Insurance Reform Act of 1994 (NFIRA), Public Law 103-325, contains certain provisions regarding the purchase and maintenance of flood insurance in order to qualify for Federal assistance, including SBA disaster assistance. Applicants who received flood disaster assistance that was conditioned on obtaining flood insurance under Federal law, but who did not obtain and maintain the insurance, are not eligible for Federal disaster relief.

NOTE: Verification of compliance can be found on the NEMIS Report, Insurance screen. A copy of this report must be scanned into the case file.

(3) Applicants who received financial assistance from SBA through its regular business loan programs are subject to this requirement. The current LAA for these programs requires flood insurance for the business and/or collateral located in an SFHA, and that the borrower maintain it for the term of the loan. There may be cases where the borrower was not required to obtain and maintain insurance. In these cases, you must document the case file to show that insurance was not required, etc., and if practical, have a copy of the authorization scanned.

(4) These provisions apply to previous SBA disaster loans even if the loans were subsequently sold to a third party.

NOTE: For additional information about the National Flood Insurance Program, refer to the NFIP website at www.fema.gov/business/nfip.

Effect of Obsolete "If/When" Condition. In the past, the LAA sometimes imposed an "if/when" or "when identified/when available" condition. This condition is unenforceable and should not be considered is establishing compliance with prior insurance companies. See also paragraph 29 e.(3)(b).
108. **EFFECT OF FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988) AND WETLANDS PROTECTION (EXECUTIVE ORDER 11990) REQUIREMENTS** (SEE 13 CFR §120.172) (52)

These Executive orders apply to applicants with total eligible damage (inventory, M&E, structures, facilities, etc.) in excess of the regulatory limit when all of the following apply.

a. The applicant qualifies as an MSE and the proposed loan approval is more than $2,000,000.

b. Sustained damage to structures and/or facilities equals 50 percent or more of their predisaster value.

c. The damaged real property (structures and/or facilities, etc.) is situated within a 100-year floodplain (Zone A).

**NOTE:** If an approved loan to an applicant suffering damage as detailed above would constitute a critical action, the two Executive orders apply if the damaged real property is situated within a 500-year floodplain. Critical actions are defined as applications from:

(1) Nursing homes, hospitals, medical clinics, etc., whose occupants lack mobility and any flood can result in the loss of life; and

(2) Liquefied natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials.

109. **ANTI-DISCRIMINATION COMPLIANCE REQUIREMENTS** (53)

a. **Applicant's Agreement of Compliance.** Whenever disaster loan funds of more than $10,000 are allocated for construction, we require all borrowers to execute SBA Form 601, "Applicant's Agreement of Compliance." For any contractor performing over $10,000 or more of the repairs for the borrower the contractor must also execute an agreement of compliance prior to any further real estate disbursement.

b. **Special Provisions Applicable to Business Loans.** All business concerns receiving disaster assistance must agree not to discriminate in any business practice, including employment practices, on the basis of race, sex, or other categories cited in 13 CFR §112 and §113.

110. **REQUIREMENTS FOR REAL ESTATE REPAIR** (54)

a. The amount of loan funds allocated to real estate repairs/replacement dictate when and if certain stipulations are required.
(1) Any loan with UP codes for real estate repair for any amount will contain notice that lead based paint is prohibited on any interior surface and any exterior surface of a residential structure which is readily accessible to children under 7 years of age.

(2) If real estate repairs exceed $14,000 for a property, a building permit is required prior to any real estate disbursement exceeding $14,000 for that property. Based on local requirements, when Chief Legal Advisor or designee determines that permits are not necessary, we consider the stipulation met without specific evidence from each borrower.

(3) If real estate repairs exceed $50,000 then borrower must provide a written construction contract or construction plan prior to any real estate disbursement exceeding $14,000 for that property.

(4) All other funds necessary to complete construction/repair must be injected into the project prior to any real estate disbursement exceeding $14,000 in real estate proceeds. This includes insurance recoveries, grants, or other assistance and any personal injections for that property.

(5) SBA may require the borrower to submit lien waivers from contractors, sub-contractors, etc., as appropriate.

NOTE: If during the disbursement process, the borrower cannot satisfy these specialized stipulations, Chief Legal Advisor or designee may waive any of these stipulations with written justification in the case file.

b. Performance Bonds. Responsibility for contractor selection rests with the borrower, but we encourage the use of bonded contractors. On rare occasions, we may require that the borrower's contractor(s) post a performance bond. This is a credit judgment that generally arises on major construction projects and involves discussion among LP, the Legal Department, and the PDC Loss Verification Department. Generally, we require a 100 percent bond executed by a corporate surety approved by the Treasury Department naming the borrower as obligee on the American Institute of Architects Form or comparable coverage. SBA is not to be named as obligee, nor is the term "completion bond" to be used. Do not require this when SBA funds are not being disbursed until completion of the project (such as in a take-out commitment).

Exception: When approving loan funds due to contractor malfeasance, a performance bond is required. This requirement may be waived by the Applications Director or Accounts Manager or their designee.

c. Provision for Seismic Safety. All new building construction or an addition to an existing building financed by a disaster loan must meet the seismic safety requirements specified in the National Earthquake Hazards Reduction Act of 1977.
111. **STIPULATIONS RELATIVE TO LEASED PREMISES** (55)

Applicants may own real estate improvements or leasehold improvements which are located on leased premises. When repair, replacement, or construction is necessary, you must carefully review the terms and conditions of the lease, and require appropriate stipulations.

a. **Requirements for Real Estate Construction or Repair.** The same criteria for imposing standard or additional requirements for real estate construction or repair of owned property apply to any RE or LHI located at leased premises.

b. **Lease Extension Requirement.** If the existing lease, including renewal options, is for a period at least equal to the proposed loan term, there will generally be no special risk. If the lease is shorter than the recommended loan term, there may be a significant risk to the viability of the business.

   (1) If necessary for collateral or eligibility purposes, require an extension of the lease for a period equal to the term of the loan.

   (2) If it is not possible or desirable to modify the term of the lease, you must fully document:

      (a) The likelihood of the applicant continuing in business at the same location when the lease terminates. If the applicant is likely to remain at the same location, it is unlikely that there will be an adverse impact on the viability of the business.

      (b) The uniqueness or adaptability of the LHI and the possible need to install the LHI at a new location if the applicant relocates.

If the applicant is likely to relocate at the expiration of the lease, the question of who owns the LHI becomes crucial. You should consult with Chief Legal Advisor as necessary to interpret these leases.

(i) If the landlord owns the LHI at the termination of the lease (see paragraph 27(l)(2)), and applicant has no right to remove the improvements, they become property of the landlord at the expiration of the lease. In these cases you should determine whether the loan terms should be reduced or the eligibility limited.

(ii) If the applicant is considered to be the owner of the LHI (see Paragraph 27(l)(1)), and has the right to remove the improvements at the end of the lease, you must determine if the applicant plans to relocate, and if relocation is practical (based on factors discussed in paragraph 60(f), although a relocation plan is not required at this time).
c. **Lease Requirement.** If the borrower does not have a formal, written lease, the LAA should require the borrower to obtain a lease "satisfactory to SBA."

d. **Lease Modification Requirement.** If any of the terms and conditions of an existing lease is unsatisfactory, the LAA should specify the necessary changes.

e. **Landlord's Waiver Requirement.** Generally, we require borrowers to obtain a landlord's waiver providing SBA employees with free access to the leased premises in case of default or foreclosure to remove collateral items. A landlord's waiver is **not** necessary when:

1. we have an assignment of the lease as collateral, or
2. we have not taken security interests in any property in the leased premises, or
3. disaster loans are made to repair, or replace disaster-damaged manufactured housing where the owner of the damaged manufactured housing is not the owner of the land on which the manufactured home is located.

112. **USE OF LOAN PROCEEDS** (56, 130)

You must use authorized use of proceeds (UP) codes to prepare the LAAs for physical and economic injury disaster loans. These are:

a. **Home Loans.**

- UP-01 Personal Property
- UP-02 Motor Vehicle (automobile, pickup truck, minivan, etc.)
- UP-04 Manufactured Housing
- UP-05 Refinance Real Estate Lien
- UP-06 Refinance Manufactured Housing/Other Lien
- UP-07 Repay IHP Grant
- UP-17 Real Estate Repair/Replacement
- UP-18 Real Estate Relocation Purchase/Construction
- UP-19 Total Real Estate Reconstruction (at damaged site)
- UP-20 Landscaping
- UP-24 Debris Removal
- UP-25 Other Land Improvements (including bridges, retaining walls, etc.)
- UP-26 Mitigation
- UP-27 Engineering/Architectural Reports
- UP-28 Geological Studies
- UP-29 Moving and Storage Expenses
b. **Business Loans.**

- UP-04 Manufactured Housing
- UP-06 Refinance Manufactured Housing/Other Lien
- UP-17 Real Estate Repair/Replacement
- UP-18 Real Estate Relocation Purchase/Construction
- UP-19 Total Real Estate Reconstruction (at damaged site)
- UP-20 Landscaping
- UP-24 Debris Removal
- UP-25 Other Land Improvements (including bridges, retaining walls, etc.)
- UP-26 Mitigation
- UP-27 Engineering/Architectural Reports
- UP-28 Geological Studies
- UP-29 Moving and Storage Expenses
- UP-30 Interim Financing
- UP-41 Code Required Damaged Structure Elevation (Forced Elevation)
- UP-42 First Year’s Insurance Premium
- UP-43 Typhoon Repair
- UP-44 Typhoon Real Estate Replacement
- UP-45 **Contractor Malfeasance**
- UP-50 Inventory
- UP-51 Machinery and Equipment
- UP-52 Furniture and Fixtures
- UP-53 Leasehold Improvements
- UP-54 Vehicles (business vehicles only)
- UP-55 Vessels
- UP-56 Aircrafts
c. Economic Injury Disaster Loans.

UP-60 Working Capital

UP-61 Working Capital with Periodic Disbursements

UP-62 Note Payable

UP-63 Accounts Payable

UP-64 Working Capital-Business/EIDL (B/E) Loan

UP-00 All Custom Use of Proceeds

NOTE: Use of Proceeds for Phase I EIDLs is restricted to working capital and notes payable.

d. Ineligible Uses of Loan Proceeds.

EIDL proceeds may not be used for:

1. Payment of any dividends or bonuses;

2. Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant;

3. Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship to the stockholder/principal;

4. Expansion of facilities or acquisition of fixed assets;

5. Repair or replacement of physical damages;

6. Refinancing long term debt;

7. Paying down (other than regular installment payments) or paying off loans provided, guaranteed, or insured by another Federal agency or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) is not considered a Federal agency for this purpose.

8. Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.

(a) If a direct Federal debt is delinquent, your recommendation must be based on independent written documentation from the
appropriate Federal agency explaining how the delinquency will be cured.

(b) If a direct Federal debt is delinquent because of the disaster, we should make arrangements with that Federal creditor to have payments deferred or a similar action taken to bring the delinquency current prior to approval of an EIDL. If the Federal creditor cannot or will not cooperate, the likely result will be a decline of the EIDL request. However, if the applicant has other resources or recoveries, we should generally allow (and perhaps require) those resources to be applied first to ineligible needs, such as the payment of direct Federal debt.

(c) When processing during the injury period, it is generally appropriate for you to negotiate with Federal creditors to defer payments (or take similar action) until the end of the injury period. You must document why this was or was not imposed.


10. Relocation

113. GENERAL LOAN STIPULATIONS FOR LARGE LOANS (GREATER THAN $1 MILLION) (58)

a. Net Earnings Clause (NEC) must be used in loan authorizations as follows:

1. The clause must be included for all large loans and MSE loans with an initial maturity of 15 years or longer unless waived by the AA/DA or designee.

2. The NEC may be required on any business physical or EIDL loan at the discretion of the Applications Director.

3. The percentage of net earnings to be applied to the loan balance must be between 5% and 10% at the Loan Officer’s discretion.

4. The NEC payment will not begin before 5 years after the first payment due date. Once payment begins it will be due no later than 90 days following the close of the Borrower’s fiscal year, but may be paid quarterly or spread over 12 months if a financial hardship can be demonstrated.

b. Distribution and Compensation Clause must be used in the LAA to include a limit on direct and indirect compensation (of all types) to the owners and officers of the business. However, a sub-chapter S corporation, partnership (limited or general), or a limited liability entity (LLE) may make distribution to shareholders, partners, or members, respectively, for the payment of tax liability attributable to earnings. Additionally, other transfers such as a lease payment to an owner of the company who also owns the building used by the company must also be limited.
c. **IPO Clause** must be used in the LAA to give SBA the option to require payment in full on the loan in the event that the borrower sells additional securities. This clause will be invoked for a private placement or public offering of securities (common or preferred stock or long-term debt with an equity feature).

d. In those rare cases when a Loan Officer determines that a NEC, distribution and compensation clause, and a stock offering clause are not appropriate for a particular loan, the reasons must be fully documented in the case file. While the General Loan Stipulations are mandatory for large loans (greater than $1 million), the stipulations may be appropriate for loans of $1 million or less.

114. RESERVED

115. RESERVED
CHAPTER 10

OBLIGATION

116. CONDITIONAL COMMITMENT LETTER (CCL) (88)

a. If a specific item(s) is needed either to confirm eligibility or to facilitate the preparation of loan closing documents (LCDs), but was not obtained at the time of application, you must prepare a conditional commitment letter (CCL). Items commonly needed for this purpose include but are not limited to:

1. A copy of the deed to real estate that includes a complete legal description;
2. A copy of the current vehicle registration to the damaged vehicle;
3. A copy of the title or the equivalent legal documentation to the damaged MH to confirm proof of ownership (Consult Chief Legal Advisor for state specific requirements). When taking the damaged MH as collateral, no other proof of ownership is acceptable;
4. A copy of the lease or rental agreement (or other proof of occupancy);
5. A copy of the Certificate of Documentation or Registration for the vessel;
6. A copy of LLE operating agreements;
7. A copy of the condominium/association governing documents;
8. A copy of trust agreements;
9. A copy of marriage/death certification;
10. Other items as needed.

117. OBLIGATING LOAN FUNDS (89)

a. We document loan approval (obligation) by entry into the loan accounting system. This action obligates funds for the approved loan. No loan is officially approved from a legal or work measurement perspective until loan obligation is complete except for MREIDL (see subparagraph 102 c.(5)). When the accounting system establishes the loan account and obligates the funds for the loan, we get confirmation in the form of a loan number, which is different from the DCMS application number. Loan numbers are unique to each loan and remain permanently assigned to the case file. After obligation, responsibility for the file is transferred from Application Processing to Accounts. If the case file has a CCL, phone contact must be made and a letter must be forwarded to the borrower.

b. If the borrower does not provide complete information requested in the CCL, we must attempt to obtain all the requested information and resolve any discrepancies, issues regarding eligibility and/or any other issues. If the issues cannot be resolved, the loan is subject to cancellation.
118. **NOTIFICATION TO BORROWER OF LOAN APPROVAL** (90)

We must notify the applicant in writing within three business days of obligation.

a. **For all disaster business loans, you must advise the borrower that,** in addition to disaster loan assistance, SBA offers business management and technical assistance services, and other management assistance through our resource partners, the Small Business Development Center (SBDC).

b. **Truth in Lending Act (TILA).** Regulation Z of the Federal Reserve Board (FRB) requires that SBA provide specific lending disclosures in appropriate cases. The following documents are required as specified below:

   (1) **Disclosure Notice.** The Disclosure Notice must be provided with the loan closing documents to all individual borrowers whose loans are approved primarily for personal, family or household purposes. This excludes all loans for business purposes and all loans to non-natural persons (e.g., corporations, partnerships, etc.). The amount of the loan and whether it is secured does not govern this requirement.

   (2) **Notice of Right to Cancel/Notice of Right to Rescind.** Two copies must be provided to each individual who is giving a security interest in their principal dwelling as part of a consumer loan transaction.

      This includes applicants, co-applicants, guarantors (whose guarantee is secured by an interest in their principal residence) and co-owners of the property on which the lien is secured even if they are not applicants or guarantors.

   (3) **Explanation of Notice of Right to Cancel.** This page is to be attached to each Notice of Right to Cancel/Notice of Right to Rescind and to be given, together with that form, to all persons who receive that form.

119. **RESERVED**

120. **RESERVED**
CHAPTER 11
CLOSING AND DISBURSEMENT

121. RESPONSIBILITY FOR CLOSING LOANS (92)

Loans are closed in accordance with Chief Legal Advisor's guidelines and supervision.

Exceptions may be made with proper justification by Chief Legal Advisor or designee.

122. CLOSING DEADLINES & EXTENSIONS (93, 94)

a. Limitation on Time for Return of Closing Documents (LCDs). LAAs include a provision limiting the time available to borrowers to return all closing documents. Borrowers have 60 calendar days from the date of the LAA to sign and return all documents and satisfy all requirements needed for an initial disbursement.

   (1) If the borrower does not return the LCDs within 30 days, the Legal Department must mail a reminder notice emphasizing the approaching deadline.

   (2) By notifying the Borrower in writing, SBA may cancel the loan if the Borrower fails to meet this requirement. The Borrower may submit and SBA may, in its sole discretion, accept documents after 2 months of the date of the LAA.

   (3) If we cancel the loan, we must send a letter specifying the reasons for the cancellation and citing requirements for reinstatement.

   (4) Reinstatement of a canceled loan is subject to the provisions of paragraph 129.

b. Disbursement Period. All LAAs contain a standard paragraph requiring the borrower to arrange for and obtain all loan funds within 6 months from the date of the LAA. The CD/PDC may, on a disaster by disaster basis, increase the standard time frame to 12 months.

c. Extension of Disbursement Period. Extension of the disbursement period is at the sole discretion of SBA.

d. Authority for Extension. Officials with delegated authority may approve extensions. Extensions must be documented in a loan modification.
(1) In accordance with paragraph 78, a Loan Officer or other official may approve an extension of the disbursement period on partially disbursed loans for a period of time not to exceed six (6) months beyond the original disbursement deadline, and no greater than 12 months from the date of the original LAA. Limitations in paragraph 93 (2) and (3) below do not apply in this case.

(2) SLOs may approve extensions for periods up to 6 months at a time, without cumulative limitation.

(3) An extension must be approved by an official at the same or higher level than the official who approved the loan.

123. **DISBURSEMENT REQUIREMENTS** (95)

a. **All Loans.** The PDC orders all disbursements. The following must be satisfied on all loans prior to disbursement:

   (1) The **Case Manager** must review the case file to determine if all documents are properly prepared and executed and all necessary conditions satisfied.

   (2) The borrower must initial any **minor** corrections made on the documents other than the Note. The documents should generally be signed exactly as the names appear on them. Corporations must affix their seal on all copies of the Note and other documents as required by State law.

   (3) The borrower must show identification when a check is personally delivered by a disaster assistance office employee.

   (4) **Prior to every disbursement,** you must complete a DOB check to determine if all **insurance**, grants and/or other recoveries have been addressed. If you determine a possible DOB exists, forward the case file to Loan Modification to address any potential DOB. A disbursement **may be made** with LP concurrence where it is clear that the pending disbursement will not constitute a DOB and the appropriate loan modification will be made after the disbursement.

   (5) When there is a DOB for IHP with FEMA, the initial loan disbursement must be for the exact amount of the IHP funds, with the initial check made co-payable to our borrower and FEMA. No further disbursement may be issued until the check is endorsed by the Borrower and returned to SBA or received by FEMA.
(6) A credit review will be required of all loans that have not been fully disbursed within 12 months from the date of the original LAA and annual reviews thereafter until the loan has been fully disbursed. The review will ensure that there have not been any adverse changes in the borrower's financial condition that would impact their ability to repay the loan before we make further disbursements that may be at risk. No disbursements can be made after the anniversary date of the original LA&A without a current credit review. At a minimum, the credit review must include an updated financial analysis, credit report (CBRs and/or D&B reports) and the appropriate IRS Form 8821, if required. If an adverse change occurs, you must cancel the loan in accordance with paragraph 128. This applies to undisbursed and partially disbursed loans.

(7) We cannot authorize any disbursement unless all loan payments are current.

(8) Upon final disbursement of loan funds, the case file must be forwarded to the appropriate servicing office.

b. **Unsecured Loans.**

Disburse fully upon the return of the properly executed Note, LAA, evidence of flood insurance where appropriate, and receipt of other necessary documents, such as insurance assignments, eligibility waivers, Form 601, Agreement of Compliance, etc.

c. **Secured Loans.**

(1) We may disburse the first $14,000 (or $5,000 for EIDLs or $50,000 for MREIDLs) if all requirements for initial disbursement (subparagraph b.) have been met. We may disburse additional funds when the appropriate security instruments and other closing documents have been properly completed.

Note: For combination or companion loans with physical and EIDL proceeds, an unsecured disbursement of $19,000 ($14,000 for physical and $5,000 for EIDL) can be issued if all requirements for initial disbursement have been met.

(2) For loans requiring insurance, the borrower must submit evidence of insurance coverage as required by the LAA.

(3) Once collateral conditions, disbursement stipulations (see subparagraph e) and proof of prior disbursed funds requirements (see paragraph e.) are
met, disbursement(s) may be up to $50,000 before meeting the title requirements.

NOTE: Because there are no physical repairs associated with an EIDL, we generally make full disbursement as soon as the borrower has satisfied all relevant LAA stipulations and conditions.

(4) Title Searches, Title Policies.

(a) We require a title or record search for loans more than $50,000. The LO may justify the requirement for loans of $50,000 or less, however these exceptions should be rare.

(b) We require a title policy only for loans greater than $250,000 and only on damaged/collateral property with $250,000 or more in equity. However, if a title policy is unavailable or if it is prohibitively expensive, and it is determined to be unnecessary to protect SBA, this requirement may be waived by Chief Legal Advisor or designee providing the exception is fully justified in the case file.

NOTE: We will not require a title search or title policy on the disaster damaged property when the Loan Officer determines that the relocation property is sufficient to fully secure the loan.

(5) Generally, secured loans over $50,000 are disbursed in stages that correspond with the borrower's needs and how they spent prior disbursements. We can make full, single disbursement of secured loans over $50,000 only when:

(a) The borrower has spent the equivalent amount of funds (excluding required prior injections) and satisfied the use of proceeds requirement; or

(b) Where counsel has assurance that the borrower will use the full disbursement as authorized (for example, a joint-payee check).

(6) We can make disbursements for completed work, labor used, or materials provided before project completion if we have evidence of proper use of loan proceeds.

(7) Refinancing funds are generally not disbursed until after the repairs are substantially complete.

d. MREIDLS.
SBA will disburse the funds in quarterly installments, unless the Loan Officer specifies otherwise in the LAA. We may make one disbursement if there is a sound business reason to do so. If the Loan Officer decides to disburse serially, they should use UP-61 (Working Capital with Periodic Disbursement) and make subsequent disbursements based on the small business’s continued need as demonstrated by comparative financial information. Approximately 30 days before the next scheduled disbursement, the PDC will request current financial information (including balance sheets and profit and loss statements) from the borrower. A Loan Officer is to review the updated financial information and make an assessment as to the continued need for MREIDL funds prior to authorizing additional disbursements.

e. Evidence from Prior Disbursement.

(1) Prior to any subsequent disbursement where the aggregate amount of physical loan funds disbursed would exceed $50,000, SBA must have evidence that funds previously disbursed have been used in accordance with the LAA. This evidence may include one or more of the following:

(a) SBA Form 1366, “Borrower’s Progress Certification.”

(b) A joint payee check.

(c) Progress inspections by the Loss Verification Department or by a government entity that, in the opinion of either Loss Verification Department, documents progress in accordance with SBA requirements.

(d) Escrow account, in accordance with paragraph 124.

(e) Lien waivers in the total amount of all labor and materials used on the RE repair/construction from all contractors, subcontractors, and independent workers involved.

(f) Paid invoices to support disbursements for equipment, furniture, inventory, etc.

(g) Other cases in which the Chief Legal Advisor determines in writing that the exception to the general rule is necessary to prevent undue hardship and the risk to the agency and the likelihood of misuse are minimal.

(2) If the borrower requests an advance payment to purchase larger items of M&E, we can disburse against a firm quotation or invoice.
(3) We should take reasonable precautions before making the final disbursement on a major construction project to ensure that the project was satisfactorily completed. Examples include receipt audits, conversations with contractors, on-site progress inspections, and in some cases, affidavits from borrowers and/or contractors. Counsel will obtain and follow guidance from the PDC Loss Verification Department throughout the disbursement period whenever major reconstruction is involved.

f. **Stipulations Prior to Disbursement.** All loan stipulation must be met before all or part of a loan may be disbursed.

124. **ESCROW ACCOUNTS AND/OR CONTROLLED ACCOUNTS** (97)

Generally, we should not disburse loans through escrow or controlled accounts. However, we may use escrow accounts when necessary to conform to State law or requirements of title companies and similar organizations, particularly relating to construction loans, purchase of real estate (including a manufactured home), or when necessary to conform to local laws such as those relating to liquor licenses. In these cases a title company, the borrower's attorney, or a bank may serve as the escrow agent. When we use a controlled account, we must consider the length of time funds may remain in the account due to interest accrual.

125. RESERVED

126. RESERVED
CHAPTER 12

LOAN SERVICING AND LOAN MODIFICATION

127. DISASTER LOAN SERVICING RESPONSIBILITY (108)

ODA is responsible for necessary servicing actions until the loan is transmitted to the appropriate servicing office. These include, but are not limited to:

a. Monitoring disaster loan installment payments and reviewing delinquency reports;

b. Contacting past due borrowers by telephone, issuing the appropriate collection notice, and encouraging prompt payment;

c. Deferring payments and reamortizing loans; and

d. Creating and maintaining the collateral file, and forwarding the file to the servicing office after full disbursement in a timely manner.

128. CANCELLATION (109)

a. At Request of Borrower. When we receive a written or oral request, we may cancel all or any portion of an approved loan. Be careful before acting on an oral request to ensure cancellation is appropriate.

b. Actions by SBA. We must initiate action to cancel all or any portion of an approved loan if:

   (1) The borrower fails to complete and return all LCDs by the deadline; or

   (2) The borrower does not satisfy all terms and conditions of the LAA; or

   (3) A substantial adverse change (including, but not limited to, notice of bankruptcy, foreclosure, or lien, undisclosed judgments or lawsuits, death of borrower, etc.) in the borrower's financial or other condition occurs (with consideration of whether a referral to FEMA is appropriate); or

   (4) The borrower does not qualify for full disbursement during the original disbursement period; or

   (5) The borrower does not request or receive approval for extension.

c. Notification.
(1) Before we initiate an action to cancel all or any funds, we must mail a letter giving 14 calendar days notice of the pending cancellation. The letter must specify the action the borrower can take to prevent the cancellation. This letter must specifically inform the borrower that the loan will be cancelled if the borrower fails to submit the requested information.

EXCEPTION: A 14-day letter is not required when the cause for the cancellation is due to the borrower’s request or we received notification that the borrower has filed for bankruptcy or SBA receives a foreclosure notice on the damaged or collateral property.

(2) Prior to the completion of the loan modification for cancellation of the loan, the Loan Officer should contact the borrower to explain our action, the reasons for the cancellation and their reinstatement rights. The Loan Officer should advise the borrower that written notification is forthcoming which will include information regarding the method and deadline for requesting reinstatement (see paragraph 129.). The Loan Officer should also advise the borrower that if we approve the reinstatement request new loan closing documents may be issued and that the original documents may no longer be valid.

d. Documentation. You must document all cancellations through a loan modification using the appropriate cancellation codes.

129. REINSTATEMENT OF CANCELLED LOAN (110)

Borrowers may request reinstatement of all or any portion of a cancelled loan. We cannot reinstate any portion of a partially cancelled loan unless the borrower is current, in compliance with all loan conditions, and has a satisfactory payment history.

a. Method and Deadline for Requesting Reinstatement. All requests for reinstatement must:

(1) Be in writing and be made within 6 months of the date of the cancellation; and

(2) Show that our cancellation action was in error; or

(3) Provide justification that we should reinstate the funds.

NOTE: We should not accept a request for reinstatement of a cancelled loan for which the borrower wishes to use his eligibility to relocate unless the borrower has identified a property and is prepared to move forward.
b. **Late Reinstatement Requests - General Policy.** We will not reinstate funds if:

1. Six months have elapsed from the date of the cancellation or reduction action, or

2. There is NO outstanding balance, the loan was cancelled in full or the disbursed balance has been paid in full.

**NOTE:** The borrower may cite their reasons for the delay as the basis for late filing of a new application.

c. **Late Reinstatement Requests - Exceptions to General Policy.** We may reinstate funds if:

1. We cancelled undisbursed funds because the borrower could not qualify for full disbursement due to reasons beyond their control; and

2. The borrower has a satisfactory payment history on SBA loans; and

3. The borrower submits a request within 6 months of overcoming the reasons for the delay (e.g. final insurance settlement, obtaining a building permit); and

4. The borrower provides all outstanding requirements listed in the cancellation letter, and

5. The remaining balance of this SBA loan has not been paid in full.

d. **Loan Closing Documents.**

1. Upon reinstatement of a loan which was cancelled in full, we will issue new loan closing documents, including a new Promissory Note with a current Note date. In certain circumstances such as when the borrower has already executed and returned the previous documents, Chief Legal Advisor or designee may determine if the executed documents are acceptable.

2. If new documents are required and a mortgage or deed of trust (lien documents) reflecting the old Note date has been recorded, a release must be filed and a new mortgage or deed of trust reflecting the new Note date must be issued and recorded.

3. Upon reinstatement, loan processing must ensure that the maturity does not exceed the maximum allowed of 30 years from the date of the first note issued for the loan.
130. **LOAN MODIFICATION (111)**

a. **Amendments and Modifications to Loan Authorizations.** You must make any necessary amendment(s) or modification(s) to any term or stipulation of an LAA in the case file. These actions are subject to the same policies governing loan processing outlined in chapter 8.

**NOTE:** A loan modification request from a borrower must generally be in writing if it involves a material change or if additional documentation is required. Such actions include, but are not limited to: Alternate Use of Proceeds, Collateral Change, Flood Insurance Change, Increase (including refinance and contractor malfeasance), Lower Interest Rate, Mitigation, Reinstatement, Subordination, Addition or Deletion of a Borrower or Guarantor.

b. **Authority to Approve Loan Modifications.** The action must be approved at the highest level of authorization utilized at original processing and/or on prior loan modifications. The exceptions are correcting typographical errors or taking any of the actions described in subparagraph 78.a (2).

c. **Authority to Decline Loan Modifications.**

   (1) For loans originally approved by an SLO, any official with delegated authority may decline a loan modification request.

   (2) For loans originally approved by the Applications Director, CD/PDC, or ODA, the **Applications Director** must take final action to decline any loan modification request.

d. **Truth in Lending Act.** Any modification of the terms set forth in the Truth in Lending Disclosure Statement (see Section 118 b.) that changes the amount in the Total of Payments block of the form requires that you issue a new Truth in Lending Disclosure Statement to the borrower(s). Any collateral change which involves the addition of a borrower’s or principal’s primary residence requires that the Legal Department issue a new Notice of Right to Cancel for the new collateral only.

e. **Asset Sale Loans.** SBA cannot modify a loan that has been sold to a third party.

131. **INCREASES IN PHYSICAL LOANS (112)**

Generally, a borrower will make a written request for a loan increase for additional disaster related damages as soon as possible after discovering the need for additional funds.
a. The increase must be requested and used to cover eligible damages, **including losses or costs not identified at the time of loan approval**. This may include, but is not limited to:

(1) Accelerated costs;

(2) Hidden damage;

(3) Post-Approval Building Code Requirements. (Additional building code requirements not known to be in effect when the loan was approved; or building code requirements passed by the appropriate authority after the loan was approved);

(4) Indirect Costs and Expenses such as engineering fees, initial insurance premiums, etc.; and/or

(5) Contractor Malfeasance (see subparagraph d. below).

Exception: A Borrower requesting an increase as a result of changed MSE status need not provide evidence of additional damages provided that the losses for which they are requesting additional funds were previously included in the loss verification report.

b. SBA will not consider a request for a loan increase received more than two (2) years from the date of loan approval. The AA/DA can waive the two-year limit due to extraordinary and unforeseeable circumstances beyond the control of the borrower.

c. **Processing Requests for Increases.**

(1) Increases are handled by loan processing and are subject to reasonable requests for financial statements and other processing data. **If an increase puts the loan into the secured category, issuance of a new or amended LAA is necessary to incorporate all required loan conditions.**

(2) The same or a higher level of authority as the person approving the original loan must approve the increase.

d. **Contractor Malfeasance.** SBA may increase a disaster loan up to the administrative lending limits to fund additional costs incurred due to contractor malfeasance in the repair of a damaged site or in the construction of a relocation property (subject to normal credit review). The amount of the funds attributable to the malfeasance must be determined by Loss Verification. The case file must include documentation of the type and amount of the malfeasance (e.g., borrower’s letter, notification from the local building authority, etc.). The approval must contain the following stipulations:
(1) SBA will require a performance bond (see subparagraph 110.b.);

(2) SBA must take an assignment of any proceeds from any claim or lawsuit against the contractor if such an action has been initiated at the time of processing. If such an action is initiated subsequent to processing, the Borrower must notify SBA.

(3) SBA will not require the Borrower to file a complaint, claim, or lawsuit against the contractor, but will insert a condition into the LAA requiring the borrower to notify SBA if such action is subsequently initiated.

Final approval of the loan increase must be taken at the **Applications Director** level or higher.

**NOTE:** EIDL funds are not eligible for consideration under contractor malfeasance.

132. RESERVED

133. RESERVED
CHAPTER 13

PORTFOLIO MANAGEMENT

134. **TELEPHONE CONTACT** (71)

Each time you have a conversation or meeting (including onsite visits) with an applicant/borrower, their representative, or anyone else (banker, insurance agent, etc.) in regards to an application or loan; there must be a corresponding entry in the Comments (Chron log) Tab of DCMS. You must record each contact or attempt to contact the applicant/borrower, regardless of who initiates the contact.

Your summary of the conversation should:

a. Include the name and comments of each participant;
b. Include the telephone number that was called or attempted, and the result of the call;
c. Identify persons who are not the applicant (e.g., representative, banker, insurance agent, accountant, etc.);
d. State only the facts, excluding your opinion or comments out of context.

135. **TELEPHONE CONTACT UPON COMPLETION OF PROCESSING** (81)

After completing the analysis you must inform the applicant of the **possible** action. Advise them that NO decision is final until they receive it in writing. You are authorized to discuss the proposed terms or reasons for the proposed action only with the individuals named on the application, or their named representatives. Under no circumstances are you permitted to leave this information on an answering machine or with any unauthorized third party. If you cannot reach the applicant by phone, document your attempt(s) to contact in the chron log and forward the case file for review.

a. Approval Recommendation.
   (1) You must inform the applicant of all proposed terms and conditions.
      (a) **Terms** include the loan amount, interest rate, installment payment, loan maturity, net earnings clause (if any), and initial due date.
      (b) **Conditions** include, at a minimum: collateral, guarantors, use of proceeds, insurance requirements/assignments, loan closing deadline, disbursement period, custom stipulations, etc.
(2) You must also ask whether the applicant has any questions. This practice avoids applicant confusion and maintains Agency credibility. Exercise care when responding to questions concerning areas with which you are not completely familiar. In these cases, tell the applicant you will seek supervisory guidance and promptly call them back.

(3) If an approval recommendation is contingent upon a "conditional commitment letter" (CCL), you must inform the applicant of required documentation. Also, advise the applicant that a representative from the Legal Department will call to follow up (see paragraphs 91 b., 116, and 117 b.).

b. **Decline Recommendation.** You must inform the applicant of the reason(s) for the proposed decline action and advise them of their right to request reconsideration.

c. **Withdrawal Recommendation.** You must inform the applicant of the reasons for the proposed withdrawal action and advise them of their right to request reacceptance.

136. **APPLICANT'S REPRESENTATIVE (72)**

SBA loan applications require a listing of attorneys, accountants, appraisers, and other representatives an applicant retains, and any present or future compensation for their services.

a. **Discussion of File Information.**

You must not discuss the case with anyone whose name does not appear on the application unless the borrower authorizes us, in writing, to do so.

b. **Reasonableness of Fees.**

The policy of SBA is to try to ensure that those who participate in its programs are not subject to fraud, dishonesty, or unnecessary or inappropriate representation that creates excessive fees or costs. We do not require applicants to engage the services of any professional to file an application. When an applicant engages a representative, SBA will review the fees charged in connection with preparing the application and assisting the applicant to obtain a loan to assess whether the fees are reasonable in relation to the services performed.

Reasonable fees are those which are for necessary and appropriate services actually performed, or for expenses actually incurred, and are comparable to those charged by other agents in that geographical area. The Applications Director or designee should review the fee information to determine if the fees are reasonable.

Some applicants may report fees paid for services not directly related to the application process, such as preparation of tax returns and regular accounting fees. These fees should not be included in the reasonability assessment.
(1) For a simple application, fees generally should not be more than:

(a) $500 for disaster home loans; and

(b) $2,500 for disaster business loans.

(2) If the representative’s fees exceed this amount, you should:

(a) Advise the applicant that the representative should provide SBA with a signed Compensation Agreement, and provide a copy to the applicant.

(b) Forward the fee information to the Applications Director or designee; and

(c) Continue to process the case file.

(3) The Applications Director or designee, in consultation as needed with the Chief Legal Advisor or designee, should review the fee information to determine whether the fees charged bear a necessary and reasonable relationship to services actually performed or expenses actually incurred, in accordance with 13 CFR §103. The Applications Director may request that the representative provide an itemization or justification of services provided or expenses incurred. If fees are determined to be unreasonable, and cannot or will not be justified by the representative, the Applications Director or Chief Legal Advisor should advise the CD/PDC who will make the final determination. Any further action should be coordinated with ODA.

c. Representative Index.

Enter the appropriate information for all representatives listed on the application in the "Representative Index" section on the Interview Data tab.

(1) You must advise the Applications Director immediately if, during processing, you learn that an applicant's representative:

(a) Has stated that SBA approval is contingent upon professional preparation of the application; or

(b) Has stated that he or she is able to get the disaster loans approved; or

(c) Generally advertises that he or she gets preferential treatment from, or has special influence or contacts within SBA; or

(d) Has charged a fee to prepare disaster loan applications, but has refused to be named on the application; or
(e) Is engaged in any other improper act.

(2) If any of the above occurs, you must provide documentation in the form of copies of advertisements, names of people who informed us of the circumstances, etc., to the Applications Director or Chief Legal Advisor so they can determine if 13 CFR §103.4 was violated. If necessary, they must notify the CD/PDC of the facts.

(3) The CD/PDC will conduct a preliminary inquiry and determine if a violation occurred. If the facts warrant, the CD/PDC will refer the matter to OIG, along with all necessary documents and a recommendation for action.

137. CASE FILE DOCUMENTATION (12)

a. Case File Maintenance. All documents must be scanned so they can be stored electronically in the case file.


(1) When you receive original processing documents, either at application entry or during processing (applicant/borrower’s deeds, abstracts of title, etc.), make a copy, mark it "copy," and date-stamp the receipt date on the copy. You must have the copy scanned into the case file and return the original(s) to the applicant/borrower.

(2) You must not write or mark on original documents received from applicants/borrowers; original documents must be copied and date-stamped, as described in subparagraph b. above.

c. Communication Documentation.

(1) You must not issue any official correspondence without a date, printed (or typed) name, and organizational title (not the personnel classification). For example, employees classified as loan specialists or construction analysts should sign documents as loan officer or loss verifier, respectively.

138. RESERVED

139. RESERVED
APPENDIX 1

INDEX TO FORMS AND REPORTS

This appendix contains a listing of the authorized forms and reports used in conjunction with disaster loan making.

SBA Form (SBA Form unless otherwise identified)

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APPENDIX 2

ACRONYMS AND DEFINITIONS

This appendix contains acronyms and abbreviations used in this SOP. Acronyms and abbreviations used by other departments (i.e., FIT, Loss Verification, and Legal) generally do not appear in this appendix.

ACRONYMS

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<td>A/R</td>
<td>Accounts Receivable</td>
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<td>Associate Administrator for Disaster Assistance</td>
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<td>Automated Clearing House</td>
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<td>Assistant Director for Loan Processing</td>
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<td>AAR</td>
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<td>Abbreviation</td>
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<td>D</td>
<td>Deputy Associate Administrator for Disaster Assistance</td>
</tr>
<tr>
<td>DAA/DA</td>
<td>Deputy Center Director</td>
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<td>D&amp;B</td>
<td>Dun and Bradstreet</td>
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<tr>
<td>DCS</td>
<td>Data Communication System</td>
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<td>DD</td>
<td>District Director</td>
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<tr>
<td>DCMS</td>
<td>Disaster Credit Management System</td>
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<td>DFO</td>
<td>Disaster Field Office</td>
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<tr>
<td>DLB</td>
<td>Disaster Loan – Business</td>
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<tr>
<td>DLH</td>
<td>Disaster Loan – Home</td>
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<td>DO</td>
<td>District Office</td>
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<td>DOB</td>
<td>Duplication of Benefits</td>
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<td>DLOC</td>
<td>Disaster Loan Outreach Center</td>
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<td>Disaster Recovery Center</td>
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<td>Disaster Verification Center</td>
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<td>ECOA</td>
<td>Equal Credit Opportunity Act</td>
</tr>
<tr>
<td>EEO</td>
<td>Equal Employment Opportunity</td>
</tr>
</tbody>
</table>
EI  Economic Injury
EIDL  Economic Injury Disaster Loan
EDP  Extension of Disbursement Period
ELE  Emergency Living Expenses

F
FAA  Federal Aviation Administration
FAC  Family Assistance Center
FAT  Financial Analysis Tool
FCO  Federal Coordinating Officer (FEMA)
FDIC  Federal Deposit Insurance Corporation
FDM  Fixed Debt Method
FEMA  Federal Emergency Management Agency
FF  Furniture & Fixtures
FHA  Federal Housing Authority
FI  Flood Insurance
FIA  Flood Insurance Administration
FIRM  Flood Insurance Rate Map
FMV  Fair Market Value
FOC-E  Field Operations Center-East
FOC-W  Field Operations Center-West
FOIA  Freedom of Information Act
FRB  Federal Reserve Board
FSA  Farm Service Agency
FTR  Federal Tax Return

G
GAI  Gross Annual Income
GM  Gross Margin
GMI  Gross Monthly Income
GP  Gross Profit
GPM  Gross Profit Margin

H
HA  Housing Assistance (FEMA Rental Assistance and Home Repair Programs)
HFAT  Home Financial Analysis Tool
HOA  Homeowner's Association
HHS  Department of Health and Human Services
HUD  Department of Housing and Urban Development
IA  Individual Assistance (FEMA)
ICC  International Code Council
IG  Inspector General
IHP  Assistance to Individuals and Households Program (FEMA)
IIP  Increased Insurance Premium
INV  Inventory
IOM  Inverse Order of Maturity
IP  Injury Period
IPO  Initial Public Offering
IRA  Individual Retirement Account
IRM  Information Resource Manager (computer specialist)
IRS  Internal Revenue Service

J, K,
JFO  Joint Field Office

L
LAA  Loan Authorization and Agreement
LAC  Local Assistance Center
LCD  Loan Closing Document
LHI  Leasehold Improvements
LLE  Limited Liability Entity
LO  Loan Officer
LP  Loan Processing
LV  Loss Verifier

M
MAFD  Maximum Acceptable Fixed Debt
M&E  Machinery & Equipment
MCM  Modified Contribution Margin
MFD  Monthly Fixed Debt
MH  Manufactured Housing
MREIDL  Military Reservist Economic Injury Disaster Loan
MSE  Major Source of Employment
MSPB  Merit Systems Protection Board
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>NAICS</td>
<td>North American Industry Classification System</td>
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<tr>
<td>NEMIS</td>
<td>National Emergency Management Information System</td>
</tr>
<tr>
<td>NCE</td>
<td>No Credit Elsewhere</td>
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<tr>
<td>NEC</td>
<td>Net Earnings Clause</td>
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<tr>
<td>NEHRP</td>
<td>National Earthquake Hazards Reduction Program</td>
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<tr>
<td>NFIP</td>
<td>National Flood Insurance Program</td>
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<td>NFIRA</td>
<td>National Flood Insurance Reform Act</td>
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<td>NP</td>
<td>Net Profit</td>
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<td>NPSC</td>
<td>National Processing Service Center</td>
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<td>OCONUS</td>
<td>Off Continental United States</td>
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<td>Office of Disaster Assistance</td>
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<td>OE</td>
<td>Office Equipment</td>
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<td>OHA</td>
<td>Office of Hearings and Appeals</td>
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<td>OIC</td>
<td>Officer-in-Charge</td>
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<td>OIG</td>
<td>Office of Inspector General</td>
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<td>Office of Management and Budget</td>
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<td>Other Needs Assistance (FEMA)</td>
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<td>OSO</td>
<td>Office of Security Operations</td>
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<td>PA</td>
<td>Public Assistance (FEMA)</td>
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<td>PASC</td>
<td>Personnel and Administrative Support Center</td>
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<td>PCA</td>
<td>Production Credit Association</td>
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<td>PDC</td>
<td>Processing and Disbursement Center</td>
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<td>PDMLP</td>
<td>Pre-Disaster Mitigation Loan Program</td>
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<tr>
<td>PITI</td>
<td>Principal, Interest, Taxes and Insurance</td>
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<td>P&amp;L</td>
<td>Profit &amp; Loss (Statement)</td>
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<td>PNP</td>
<td>Private Nonprofit</td>
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<td>Personal Property</td>
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<td>Pre-Loss Verification Review Process</td>
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<tr>
<td>PUD</td>
<td>Planned Unit Development</td>
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<td>QA</td>
<td>Quality Assurance</td>
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<tr>
<td>Symbol</td>
<td>Abbreviation</td>
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<td>YTD</td>
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APPENDIX 3

REASONS FOR WITHDRAWAL OF APPLICATION

Withdrawal Code 51
Requested information was not furnished

We have withdrawn your application from active consideration because you did not furnish the requested additional information necessary to process your loan application.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must contain all significant information to show that our action was in error or that the withdrawal resulted from causes beyond your control.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Withdrawal Code 52
Applicant’s Request – A change in plans

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date). You stated that your plans have changed and the requested loan is no longer needed.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must contain all significant information to overcome the reason for withdrawal.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Withdrawal Code 53
Applicant’s Request – No reason given

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date).
You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- The request must be in writing.
- The request must be received by this office no later than six months from the date of this letter.
- The request must contain all significant information to overcome the reason for withdrawal.
- The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- (Optional text for additional items).

**Withdrawal Code 54**

**Applicant’s Request – Due to availability of insurance or other recovery**

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date). You stated that due to the availability of insurance or other recovery the requested loan is no longer needed.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- The request must be in writing.
- The request must be received by this office no later than six months from the date of this letter.
- The request must contain all significant information to overcome the reason for withdrawal.
- The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- (Optional text for additional items).

**Withdrawal Code 55**

**Applicant’s Request – State basis for request**

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date). You stated that the requested loan is no longer needed because ____________________________.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

- The request must be in writing.
- The request must be received by this office no later than six months from the date of this letter.
- The request must contain all significant information to overcome the reason for withdrawal.
- The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
- (Optional text for additional items).
Withdrawal Code 56
(Select Option A or Option B below)

Option A - Unable to verify property

We have withdrawn your application from active consideration because we have been unable to gain access to the disaster damaged property for an on-site inspection.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must include your current telephone number, or the name and telephone number of a designated representative we can contact to schedule an appointment to verify your disaster losses.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Option B - Custom text
Insert Custom Text

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must contain all significant information to overcome the reason for withdrawal.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Withdrawal Code 57
Consolidation of multiple applications

We have received multiple applications and/or duplicate claims for damages caused from the same disaster declaration. We have consolidated all of your eligible disaster losses under one application and assigned it to a Loan Officer for processing. The remaining application(s) has been withdrawn from active consideration.

Withdrawal Code 58
Consolidation of related applications

We have received multiple applications and/or duplicate claims for damages caused from related disaster declarations. We have consolidated all of your eligible disaster losses under one application and assigned it to a Loan Officer for processing. The remaining application(s) has been withdrawn from active consideration.
Withdrawal Code 59  
IRS has no record

We have withdrawn your application from active consideration because we cannot document (individual’s or entity’s name) income. SBA uses Federal Income Tax Returns as its source for documenting income. In response to our inquiry of the Internal Revenue Service (IRS), they reported “no record found” for a filing of a tax return by (individual’s or entity’s name) for the year(s) ________.

When IRS records indicate that an individual or business has failed to file Federal Income Tax Returns, SBA’s policy is to refer the matter to the IRS for review. Accordingly, we have referred your file to the IRS.

If you disagree with the IRS determination that no tax records were found for the year(s) referenced above, you may contact your local IRS office regarding this discrepancy. Your local IRS office can give you any necessary documentation to resolve this discrepancy.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must contain all significant information to overcome the reason for withdrawal.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Code 60—Character Eligibility Determination

60-a: Withdrawal of an otherwise approvable application

We have withdrawn your application from active consideration pending a formal character eligibility determination. It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. Therefore, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination.

You have the right to request reacceptance of your withdrawn application. In order to request reacceptance and begin a character eligibility determination, you must provide the information outlined below.

(Select Option A or Option B below)

Option A

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by (name). Fingerprints may be taken at various county and state
agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 and Form 912 to the following address:

U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243

Option B

We are required to obtain fingerprints from (name) on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 to the following address:

U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243

To be sure that we consider all relevant information, also provide the following documentation:

1. A detailed narrative describing the circumstances of each event, including:
   A. The incident date(s).
   B. The city and state in which the incident(s) occurred.
   C. The nature of the incident(s), including arrest, conviction, and description.
   D. The penalties, such as fines, time served, parole, probation, etc.
   E. The disposition (dismissal, sentence(s) served, etc.).

2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.
3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

This information must be received within six months of the date of this letter. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. Your application will remain inactive until a character evaluation is completed.

If you have any questions regarding this matter, please contact us at the number listed above.

** 60-d: Decline (Insert in decline letter after reconsideration requirements) **

In addition to the reason(s) for decline explained above, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination. At this time, the character element of SBA’s loan consideration has not been resolved. If you ask us to reconsider our decline decision, you must provide the additional information outlined below with your reconsideration request.

(Select Option A or Option B below)

**Option A**

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by (name). Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. Do not fold Form FD-258. Please return the completed Form FD-258 and Form 912 to the following address:

U.S. Small Business Administration
Processing and Disbursement Center
14925 Kingsport Road
Fort Worth, TX 76155-2243

**Option B**

We are required to obtain fingerprints from (name) on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies
Please take care to ensure that the prints do not smudge. **Do not fold Form FD-258.** Please return the completed Form FD-258 to the following address:

U.S. Small Business Administration  
Processing and Disbursement Center  
14925 Kingsport Road  
Fort Worth, TX 76155-2243

To be sure that we consider all relevant information, also provide the following documentation:

1. A **detailed narrative** describing the circumstances of each event, including:
   
   A. The incident date(s).
   B. The city and state in which the incident(s) occurred.
   C. The nature of the incident(s), including arrest, conviction, and description.
   D. The penalties, such as fines, time served, parole, probation, etc.
   E. The disposition (dismissal, sentence(s) served, etc.).

2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.

3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

You must provide this information with your reconsideration request. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. If the reason(s) for decline can be overcome, we may proceed with the processing of your application only after the character evaluation is completed.

**60-w: Withdrawal** (insert in withdrawal letter after/reacceptance requirements)

In addition to the reason(s) for withdrawal explained above, we are required by regulation to perform a character eligibility determination for any applicant who responds affirmatively to the personal history question asked in the application. We consider behavior, candor, integrity, and disposition of criminal actions in our character determination. At this time, the character element of SBA’s loan consideration has not been resolved. If you ask us to reaccept your application, you must provide the information outlined below with your reacceptance request.

**(Select Option A or Option B below)**

**Option A**

We have enclosed SBA Form 912, Statement of Personal History, and Form FD 258 (fingerprint card) to be completed by **(name)**. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles
2. Local Law Enforcement Agencies
3. Private Fingerprint Companies

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Please take care to ensure that the prints do not smudge. **Do not fold Form FD-258.** Please return the completed Form FD-258 and Form 912 to the following address:

U.S. Small Business Administration  
Processing and Disbursement Center  
14925 Kingsport Road  
Fort Worth, TX 76155-2243

**Option B**

We are required to obtain fingerprints from (name) on the enclosed Form FD 258. Fingerprints may be taken at various county and state agencies. A fee is usually charged for this service. To assist you in this process, you may wish to contact one of the following:

1. Department of Motor Vehicles  
2. Local Law Enforcement Agencies  
3. Private Fingerprint Companies

Please take care to ensure that the prints do not smudge. **Do not fold Form FD-258.** Please return the completed Form FD-258 to the following address:

U.S. Small Business Administration  
Processing and Disbursement Center  
14925 Kingsport Road  
Fort Worth, TX 76155-2243

To be sure that we consider all relevant information, also provide the following documentation:

1. A **detailed narrative** describing the circumstances of each event, including:
   
   A. The incident date(s).  
   B. The city and state in which the incident(s) occurred.  
   C. The nature of the incident(s), including arrest, conviction, and description.  
   D. The penalties, such as fines, time served, parole, probation, etc.  
   E. The disposition (dismissal, sentence(s) served, etc.).

2. Copies of records from the police, probation authorities, court, etc., including all documents relating to the events.

3. Other details that we should consider, such as character reference(s) from reputable third party(s), a letter from your probation and/or parole officer, etc.

You must provide this information with your reacceptance request. Upon receipt, we will forward the completed documentation to the Office of Security Operations in Washington, D.C. If the reasons for the withdrawal can be overcome, we may proceed with the processing of your application only after the character evaluation is completed.
Withdrawal Code 61
Applicant’s Request – Due to market rate

We have withdrawn your application from active consideration based on your (telephone/written/fax) request of (insert date). You stated that the loan terms were not acceptable due to the interest rate.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

a. The request must be in writing.
b. The request must be received by this office no later than six months from the date of this letter.
c. The request must contain all significant information to overcome the reason for withdrawal.
d. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
e. (Optional text for additional items).

Withdrawal Code 65-w
Pre-Disaster Mitigation Loan – Approval - No funds available

This responds to your recent request for assistance for a Pre-Disaster Mitigation Loan from the U.S. Small Business Administration (SBA). We approved your loan request on _____________. However, all available funding for this pilot program has been exhausted and we are unable to disburse any loan funds at this time.

We want to assure you that if more funds become available, your request will be given priority status, based on the original acceptance date of your application. We will contact you before reaccepting your request to confirm if you wish to proceed. Please note that if more than six (6) months pass since SBA approved your request, we may require updated or additional financial information.

We regret our inability to be of assistance to you at this time. If you have any questions about this action, please contact our office at the above address or the toll free number.

** Home loan applicants declined for this coded reason are referred to FEMA for possible grant consideration only when SBA has determined that the applicant is also financially ineligible for a loan.

Withdrawal Code 66
Military Reserve EIDL-Official Call-up Orders
We have withdrawn your application from active consideration because we cannot complete the processing of your application until we receive a copy of the essential employee’s official call-up orders showing the date of deployment to active duty status.

You have the right to request reacceptance of your withdrawn application. However, your request must comply with the following requirements:

f. The request must be in writing.
g. The request must be received by this office no later than one year from the date the essential employee is released from active duty.
h. The request must include a copy of the essential employee’s official call-up orders showing the date of deployment to active duty.
i. The request must contain a completed, signed and dated IRS Form 8821. (enclosed)
j. (Optional text for additional items).
APPENDIX 4

REASONS FOR DECLINE OF APPLICATION

* Decline Code 20
Lack of repayment ability - Applicant's income below minimum income level for the family size (NOTE: Used in Summary Decline, Auto-Decline, and Pre-LV Review processes only.)

Your loan request indicates monthly household income of approximately $\textit{(Monthly income)} and a household size of \textit{(household size number)} member(s). We conclude that there is no reasonable assurance that your household budget can support the additional debt which would result from a disaster loan.

* Decline Code 21
Lack of repayment ability

Our analysis of all the information provided with your loan application concluded your income is insufficient to repay a disaster loan in addition to your existing debts, living expenses, taxes, insurance, and other obligations.

Decline Code 22 (NOTE: Only for business physical loans with credit available elsewhere. Does not apply to nonprofits.)
Lack of ability to repay a disaster loan within a maximum three-year term

Federal law requires SBA to determine whether credit [based on available assets and uncompensated losses of the applicant(s)/principal(s)/affiliate(s)] in an amount needed to accomplish full disaster recovery is available from nongovernmental sources on reasonable terms and conditions without creating an undue financial hardship. The law calls this credit available elsewhere.

Disaster loans are taxpayer subsidized. Congress intended that applicants able to provide funding for their own recovery must receive disaster loans at a higher rate of interest in order to encourage applicants to seek nongovernment assistance. In the case of this disaster, that interest rate is ___ % for disaster business loans. Further, the law limits loans to businesses with credit available elsewhere to a maximum repayment term of three (3) years.

We determined through a comprehensive analysis of all the financial and credit information included with your application that you have credit available elsewhere. Our analysis indicated you could obtain financing from nongovernmental sources on reasonable terms in an amount sufficient to repair your disaster-damaged property.

Consequently, any loan we could offer must be at the higher interest rate and the three (3) year maximum term. We concluded your income is insufficient to repay the loan within the maximum term of three (3) years permitted by law.
Decline Code 23  (NOTE: This reason to be used where repayment ability is based on forecast rather than historical information.)

**Inadequate cash flow to repay a disaster loan and meet other obligations**

We carefully examined the forecasted revenues and expenses you provided to assess your ability to repay a disaster loan. We are unable to use those figures as a basis for repayment because *(cite specific reasons)* (e.g., are not reasonable when compared with industry averages).

Our analysis of all the information provided with your loan application concluded there is a lack of reasonable assurance your business can generate adequate cash flow to repay a disaster loan in addition to its existing debts, expenses, taxes, insurance, and other obligations.

Decline Code 24  (NOTE: Never use as only reason for decline.)

**Excessive amount of debt relative to net worth**

Our analysis of the financial information you submitted shows that the business’ liabilities prior to the disaster substantially exceed either the assets of the business or the owner’s investment. This unsatisfactory financial condition would not change even if SBA were able to approve a disaster loan in the amount of your eligible losses.

Decline Code 25  (NOTE: Never use as only reason for decline.)

**Inadequate working capital even if SBA could approve a loan**

The sole purpose of an Economic Injury Disaster Loan (EIDL) is to help a small business meet its working capital requirements during the disaster-affected period until normal operations resume. The amount of an applicant’s economic injury eligibility cannot exceed the working capital needs the business and its owners could have covered if the disaster had not occurred.

Generally, we measure economic injury by comparing the gross margins generated by the business during the period affected by the disaster to those generated in similar, nondisaster periods. The differences show the disaster’s financial impact on the business’ operations. Next, we determine the amount of funds the business and its owners need until normal operations resume. Finally, we compare the disaster’s impact on operations with the identified financial needs. The smaller of these two amounts is the business’ maximum economic injury eligibility.

Our evaluation of the information you submitted with your application shows that the financial needs of the business and its owners substantially exceed the disaster’s impact on its operations. We concluded that you could not have covered all of the business’ working capital requirements even if there had not been a disaster. Because you do not have the resources to meet this working capital shortage, we are unable to offer you a disaster loan.
* **Decline Code 26**

**Unsatisfactory history on an existing or previous SBA loan**

Our records indicate that (insert name) is named as a borrower/co-borrower/guarantor on an existing/a previous SBA loan, (insert loan number).

Option 1. The loan is currently in a delinquent/liquidation/charged-off status.

Option 2. The hazard/windstorm insurance requirements have not been maintained on this loan.

Option 3. The loan has an unsatisfactory payment history.

As a result of this unsatisfactory performance, we are unable to offer you additional SBA loan assistance.

* **Decline Code 27**

**Unsatisfactory history on a Federal obligation**

We lack reasonable assurance that the applicant will comply with the terms of the loan agreement based on an existing or previous Federal debt, specifically________________. (NOTE: Cite the delinquent Federal loan or obligation.)

* **Decline Code 28**

**Unsatisfactory credit history**

Our evaluation of your credit report and related information indicates that you have not complied with the terms of your prior debt obligations. As a result, we lack reasonable assurance of your willingness or ability to comply with the terms of a disaster loan. We based this decision on information obtained from Equifax, P. O. Box 740241, Atlanta, GA 30374-0241, (800) 685-1111.

* **Decline Code 29 (NOTE: Use for other than a credit bureau.)**

**Unsatisfactory debt payment history**

We carefully examined your history of paying debt obligations. Our evaluation indicated that you have not complied with the terms of your prior debt obligations. As a result, we lack reasonable assurance of your willingness or ability to comply with the terms of a disaster loan. We based this decision on _________________________ (specify the nature of information.).

You may submit a written request for the disclosure of the nature, not the source, of the information upon which we based the decline action. Your request must be received within 60 days from the date of this letter.

* **Decline Code 30 (NOTE: Use only when the verified loss is zero.)**

**No disaster-related damage**

SBA disaster loans are available only for property damage directly caused by the declared disaster. Based on our on-site inspection of your property, we determined the (disaster event) did not cause damage to your property.
Decline Code 31

Economic injury is not substantiated

The sole purpose of an Economic Injury Disaster Loan (EIDL) is to help a small business meet its working capital requirements during the disaster-affected period until normal operations resume. Economic injury is a change in the financial condition of a small business concern that is directly attributable to the effects of the declared disaster. This change in financial condition must result in the business being unable to meet its obligations as they mature or to pay ordinary and necessary operating expenses.

Generally, we measure economic injury by comparing the gross margins generated by the business during the period affected by the disaster to those generated in similar, nondisaster periods. The differences show the disaster’s financial impact on the business’ operations. Next, we determine the amount of funds the business and its owners need until normal operations resume. Finally, we compare the disaster’s impact on operations with the identified financial needs. The smaller of these two amounts is the business’ maximum economic injury eligibility. Economic injury disaster loans cannot exceed the financial requirements the business and its owners could have covered had there been no disaster.

Option A - (No needs)

Our analysis of the financial information provided with your application indicates you have been able to meet all financial needs attributable to (declared disaster event) through your own resources without undue hardship. Because there are no unmet financial needs, we cannot substantiate any eligible economic injury.

Option B - (Disaster Gross Margin Exceeds Normal)

Our analysis of the financial information you provided with your application revealed the gross margins generated during the period affected by the disaster exceeded your normal, nondisaster levels. As a result, we cannot substantiate any eligible economic injury.

Option C - (Custom Text)

Decline Code 32 (NOTE: Use only for EIDLs.)

Business activity is not eligible

Economic Injury Disaster Loans (EIDL) are available only to a small business engaged in an eligible business activity. Business activity means the nature of the business conducted by the applicant.

When the applicant, together with any affiliates, conducts more than one business activity, we first determine the applicant’s main business activity. Generally, the main business activity is the one that produces the most revenue. We then identify the business activity that was impacted by the declared disaster event. This is called the loss activity. Both the main activity and the loss activity must be eligible in order to be eligible for an EIDL.

In your case, the information you submitted with your application indicates the (main/loss) activity is __________. This is not an eligible business activity according to SBA regulations (cite the regulation).
Decline Code 33 (NOTE: Use only for EIDLs.)

Not eligible because the applicant is not a small business

Federal law limits Economic Injury Disaster Loans (EIDL) to small businesses only. To be eligible for an EIDL, an applicant must not exceed the SBA size standard for its industry. For different industries, size standards are measured by either revenues or number of employees. The test is applied to the industry in which the applicant alone is primarily engaged. Additionally, if the applicant has any affiliates, it is also applied to the industry in which the applicant together with its affiliates is primarily engaged.

Based on our analysis of the information you provided, the (applicant/applicant together with affiliates) is primarily engaged in (specify industry). The applicant, (insert business name), does not meet the (adjusted size standard/size standard) of (state the size standard) for (specify industry). For this reason, we have concluded that the applicant does not meet the requirement to be a small business for this purpose. If you disagree with our decision, you may request a formal size determination by completing the attached SBA Form 355.

Decline Code 34 (NOTE: Use only for EIDLs.)

Credit is available elsewhere

Federal law requires SBA to determine whether credit (based on available assets and uncompensated losses of the applicant/principal/affiliates) in an amount needed to accomplish full disaster recovery is available from nongovernment sources on reasonable terms and conditions without creating an undue financial hardship. The law calls this credit available elsewhere.

Disaster loans are taxpayer subsidized. Congress intended that applicants able to provide funding for their own recovery must do so and are not eligible for Economic Injury Disaster Loans (EIDL). We analyzed your loan application and supporting financial information to determine all your income, assets and debts. We concluded that (business/ owner(s)/ partners/ shareholders) has/have credit available elsewhere and is/are not eligible for EIDL assistance.

Decline Code 35

Not located in the declared disaster area

Option A - (For physical applications)

To be eligible for SBA disaster loan assistance, the damaged property must be located within the area named in the disaster declaration. According to information in your application, your property is located in _________________, which is not within the declared disaster area.

Option B - (For EIDL applications)

To be eligible for a SBA Economic Injury Disaster Loan (EIDL), applicants must be located within the area named in the disaster declaration. This means that the business must have a physical presence in the area named in the disaster declaration. An economic presence alone does not meet the location requirement.
After considering the information you presented in your application, we determined that you do not have a physical presence in the area named in the disaster declaration.

**Decline Code 36 (NOTE: To be used for secondary homes, etc.)**

**Ineligible real property**

Federal regulations limit disaster loans to certain types of real property in order to avoid using taxpayer-subsidized funds for non-essential purposes. Disaster-damaged residential property is eligible for SBA assistance if the property is the applicant’s primary residence or if it is a qualified rental property.

According to the information you provided, the damaged property is neither your primary residence nor a qualified rental property. Some applicants may have more than one residence; however, a disaster victim, for SBA disaster loan purposes, can only have one primary residence.

The following usually identifies a primary residence:

1. The applicant has filed for homestead exemption on the disaster damaged property for property tax purposes.
2. The address of the damaged property is used by the applicant for voting purposes.
3. The address of the damaged property is used to identify the school district to which the applicant’s children are assigned.
4. The applicant uses the address of the damaged property on Federal Income Tax Returns.
5. The applicant uses the damaged property residence the greatest percentage of the year.
6. Other similar factors.

**Decline 37**

**Ineligible personal property**

Some types of personal property are not eligible for SBA disaster loan assistance. This restriction is provided by Federal regulation in order to avoid using taxpayer subsidized funds for non-essential purposes. Examples of ineligible personal property are recreational vehicles, collectibles, cash, etc.

The damaged property for which you requested assistance is not eligible.

**Decline Code 38**

**Not eligible due to recoveries from other sources**

SBA disaster assistance is available for disaster losses that are not fully compensated by insurance recoveries, grants, or other sources. According to our information, you received compensation for your disaster losses from (your insurance company/FEMA/specify other) in amounts that fully cover your eligible disaster damages.
Decline Code 39

Option A –
Not eligible due to failure to maintain flood insurance coverage on an existing SBA loan

(Name of borrower or guarantor) is named as a (borrower/guarantor) on an existing SBA loan, (insert loan number(s)). The terms and stipulations of that loan agreement required (name of borrower or guarantor) to purchase flood insurance for the property located at (specify address), and to maintain that coverage for the life of the loan.

Our analysis shows that the required flood insurance coverage on the existing loan was not in effect at the time of the disaster. As a result of the failure to maintain the required insurance coverage, you are not eligible for SBA disaster assistance.

Option B -
Not eligible due to failure to maintain required flood insurance on a loan from a federally regulated lender

You are not eligible for SBA disaster loan assistance because you failed to meet the flood insurance requirement of your existing mortgage on the property located at ______(specify address)________________. Your existing mortgage with _________________________, a financial institution that is federally regulated, required you to purchase and maintain flood insurance coverage. The National Flood Insurance Reform Act of 1994 prohibits SBA from providing disaster loan assistance to applicants that failed to comply with an existing Federal flood insurance requirement.

Our analysis shows that the required flood insurance coverage on your existing loan was not in effect at the time of the disaster. As a result of your failure to maintain the required insurance coverage, you are not eligible for SBA disaster assistance.

Option C -
Not eligible due to failure to maintain required flood insurance as directed by the Federal Emergency Management Agency (FEMA)

You are not eligible for SBA disaster loan assistance because you failed to maintain flood insurance as a condition of a previous grant from the Federal Emergency Management Agency (FEMA). The National Flood Insurance Reform Act of 1994 prohibits SBA from providing disaster loan assistance to applicants that failed to comply with an existing Federal flood insurance requirement.
Our analysis shows that the required flood insurance coverage on your home was not in effect at the time of the disaster. As a result of your failure to maintain the required flood insurance coverage, you are not eligible for SBA disaster assistance.

**Decline Code 40**  (NOTE: This includes situations such as claimed business income not supported by FTRs, undeclared rental income, income from hobbies, business ventures not in the organizing stage, etc.)

**Not a qualified business**

**Option A – Business**

To be eligible for SBA disaster loan assistance, the applicant must be a qualified business. All disaster business applicants must provide documentation, such as Federal Tax Returns or other evidence to establish their operation as a qualified business.

Based on our analysis of the information provided with your application, we are unable to establish that a qualified business existed at the time of the disaster.

**Option B – Rental**

To be eligible for SBA disaster loan assistance, the disaster damaged property must be a qualified rental. All disaster business applicants must provide documentation, such as Federal Tax Returns or other evidence to establish their operation as a qualified rental.

Based on our analysis of the information provided with your application, we are unable to establish that a qualified rental existed at the time of the disaster.

**Decline Code 41**

**Refusal to pledge available collateral**

Collateral is required for the proposed disaster loan, and SBA determines the best available collateral to secure the loan. If an applicant offers other collateral, we try to accommodate their request. However, SBA makes the final determination of what collateral will best protect the government’s interest. SBA may decline a loan request if the applicant refuses to pledge available collateral.

Our review of the information submitted with your application indicates that you have collateral available to secure the proposed loan, but you have refused to pledge the collateral SBA requested.

**Decline Code 42**

**Not eligible due to delinquent child support payments**

Federal law prohibits SBA from approving a disaster loan to an applicant who is more than sixty (60) days delinquent on child support obligations. These obligations include administrative orders, court orders, and agreements requiring the payment of child support.

The information available to us indicates that you have a child support obligation that is delinquent in excess of sixty (60) days.
**Decline Code 43**

**Not eligible due to character reasons**

To be eligible for SBA disaster loan assistance, an applicant must be of good character. In cases where the applicant is a corporation, partnership, or limited liability entity, the character issue extends to the principals of the business.

SBA has determined that (insert name of individual) does not meet SBA’s character standards. This decision is based upon the Statement of Personal History, related documents submitted with the application, and government record checks.

**Decline Code 44I**

**Lack of repayment ability – Below minimum income level for the family size based upon the applicant’s income alone**

We examined your loan application and supporting financial information to establish your income and debts. We based our analysis on your income only, because you informed us that your spouse or the co-owner chose not to be an applicant for the disaster loan. Your loan request indicates monthly household income of approximately $(Monthly income) and a household size of (household size number) member(s). We conclude that there is no reasonable assurance that your household budget can support the additional debt, which would result from a disaster loan.

**Decline Code 44R**

**Lack of ability to repay a disaster loan based upon the applicant’s income alone**

We examined your loan application and supporting financial information to establish your income and debts. We based our analysis on your income only, because you informed us that your spouse or the co-owner chose not to be an applicant for the disaster loan. Your loan request indicates monthly income of approximately $(Monthly income) and monthly payments of approximately $(Monthly Debts). This leaves $(Monthly income – monthly debts) to cover monthly living expenses, taxes, insurance, etc. for your household of ( household size number) member(s). Therefore, we conclude that there is no reasonable assurance that your budget can support the additional debt, which would result from a disaster loan.

*Decline Code 45*

**Not eligible due to an outstanding judgment lien for a Federal debt**

Federal law prohibits SBA from approving a disaster loan to an applicant who owns property that is subject to an outstanding judgment lien for a debt owed to the United States. The information available to us indicates that the United States placed a judgment lien on the property you own at (specify the address) for a previously unpaid Federal debt owed to (cite the Federal creditor).
Decline Code 46

Option A–
Agricultural enterprises are not eligible

By law, agricultural enterprises are not eligible for disaster assistance from SBA. The law makes SBA disaster loans available to homeowners, renters, nonfarm businesses, and private nonprofit organizations.

The law defines agricultural enterprises as those businesses that are engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

According to the information provided with your loan application, your business meets the definition of an agricultural enterprise and is not eligible for SBA disaster assistance. You may wish to contact the U.S. Department of Agriculture for information regarding their disaster recovery programs.

Option B –
Members of a fishing crew do not qualify as an eligible small business concern

To be eligible for an Economic Injury Disaster Loan (EIDL), an applicant must be an independently owned and operated small business concern. The owners must have a substantial business risk resulting from investing in facilities or equipment, and must incur significant expenses regardless of whether the operation generates a profit. The owner(s) must share in the risk of both the profits and the losses.

Your application indicates that at the time of the disaster you were a crew member on a fishing vessel owned by another party. As a crew member, you had no liability for trip expenses, vessel payments, or other fixed costs that must be paid, even if the catch did not cover the trip’s expenses. Because you do not have a substantial business risk, you do not own and operate an eligible business concern.

Option C –
Not eligible due to property being located in a Coastal Barrier Resource Area

Federal law prohibits SBA from approving a disaster loan for any purpose within a Coastal Barrier Resource Area (COBRA) as defined by the Department of Interior, Fish and Wildlife Services.

Our analysis indicates that your disaster damaged property is located within a COBRA and is not eligible for SBA disaster assistance.

Option D –
Custom Text
Decline Code 65D – Pre-Disaster Mitigation Loan Program

We have thoroughly reviewed your recent application for a Pre-Disaster Mitigation Loan from the U.S. Small Business Administration (SBA). Although we made every effort to approve your loan request, we are unable to do so for the following reason(s):

(Select either Option A, B, C, D, or, E below)

Option A:
The mitigation proposal you submitted is not reasonable in terms of cost for the following:
  • (state reason)

Option B:
The mitigation proposal you submitted is not reasonable in terms of accomplishing the desired purpose because of the following:
  • (state reason)

Option C:
The total cost of the mitigation project exceeds the Pre-Disaster Mitigation Loan program limit of $50,000 and you have been unable to provide adequate documentation for funding the additional project cost. Specifically,

Option D:
Insert custom verbiage to address eligibility issues for PDMLP only.

Option E:
Insert custom verbiage.

* Home loan applicants declined for these coded reasons are referred to FEMA for possible grant consideration.

** Home loan applicants declined for these coded reasons are referred to FEMA for possible grant consideration only when SBA has determined that the applicant is also financially ineligible for a loan.
APPENDIX 5

CONDITIONAL COMMITMENT LETTER (CCL) CODES

NOTE: Only the underlined information is entered for the CCL.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>RD-01</td>
<td>A copy of the deed to real estate located at (street address) reflecting ownership in the name of (owner's name) that includes a complete legal description</td>
</tr>
<tr>
<td>RD-02</td>
<td>A copy of the current vehicle registration to your (vehicle description, including year, make, and model).</td>
</tr>
<tr>
<td>RD-03</td>
<td>A copy of the title or manufacturer's Certificate of Origin to your (manufactured home description, including year, make, and model).</td>
</tr>
<tr>
<td>RD-04</td>
<td>A copy of the lease or rental agreement (or other proof of occupancy) to (street address).</td>
</tr>
<tr>
<td>RD-05</td>
<td>A copy of the Certificate of Documentation or Registration to (vessel description, including name, length, and home port).</td>
</tr>
<tr>
<td>RD-06</td>
<td>Deleted.</td>
</tr>
<tr>
<td>RD-00</td>
<td>Customized Text.</td>
</tr>
</tbody>
</table>

U. S. C Title 8, the Immigration and Nationality Act, defines citizens and nationals, and establishes that a citizen or noncitizen national is eligible for a Federal public benefit, including a loan provided by an agency of the United States.

(1) **Citizen** is defined in 8 U.S.C, section 1401:

The following shall be nationals and citizens of the United States at birth:

(a) a person born in the United States, and subject to the jurisdiction thereof;

(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of Title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person
(A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of Title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

(2) **Non-Citizen National** is defined in 8 U.S.C., section 1408:

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 1401(g) of this title shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

b. **Qualified Alien.** U.S.C. Title 8 states that an alien who is not a qualified alien is not eligible for any Federal public benefit, including a loan provided by an agency of the United States (8 USC 1611(b) and (c)). 8 USC 1641(b) defines a qualified alien:

The term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],
(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231 (b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153 (a)(7)] as in effect prior to April 1, 1980;[1] or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

c. Citizenship Documents. As defined by the U. S. Customs and Immigration Service (USCIS), the most common documents that establish U.S. citizenship are:

(1) Birth Certificate, issued by a U.S. State (if the person was born in the United States), or by the U.S. Department of State (if the person was born abroad to U.S. citizen parents who registered the child’s birth and U.S. citizenship with the U.S. Embassy or consulate);

(2) U.S. Passport, issued by the U.S. Department of State;

(3) Certificate of Citizenship, issued to a person born outside the United States who derived or acquired U.S. citizenship through a U.S. citizen parent; or

(4) Naturalization Certificate, issued to a person who became a U.S. citizen after 18 years of age through the naturalization process.

d. Alternate Documentation. Consult the Chief Legal Advisor or designee for:

(1) Documents that may be used to prove legal presence in the U. S. under the conditions listed in subparagraph b., or

(2) Additional documents that may be used to prove U. S. citizenship and identification if the documents listed in subparagraph c. are not available.
FILING REQUIREMENTS

DISASTER HOME LOAN APPLICATION

Filing Requirements

REQUIRED FOR ALL LOAN APPLICATIONS:

- Complete and sign this application form (SBA Form 5C)
- Complete and sign the Tax Information Authorization (IRS Form 8821) enclosed with this application. This income information, obtained from the IRS, will help us determine your repayment ability

WHILE NOT NECESSARY TO ACCEPT YOUR APPLICATION, YOU MAY BE REQUIRED TO SUPPLY THE FOLLOWING INFORMATION TO PROCESS THE APPLICATION. IF REQUESTED, PLEASE PROVIDE WITHIN 7 DAYS OF THE INFORMATION REQUEST:

- If any applicant has changed employment within the past two years, provide a copy of a current (within 1 month of the application date) pay stub for all applicants
- If we need additional income information, you may be asked to provide copies of your Federal income tax returns, including all schedules

IF SBA APPROVES YOUR LOAN, WE MAY REQUIRE THE FOLLOWING ITEMS BEFORE LOAN CLOSING. WE WILL ADVISE YOU, IN WRITING, OF THE DOCUMENTS WE NEED.

- If you own your residence, a COMPLETE legible copy of the deed, including the legal description of the property
- If the damaged property is your primary residence, proof of residency at the damaged address

- If you had damage to a manufactured home, a copy of the title. If you own the lot where the home is located, a COMPLETE legible copy of the deed, including the legal description of the property

- If you have damage to an automobile or other vehicle, a copy of the current registration
DISASTER BUSINESS LOAN APPLICATION

Filing Requirements

FOR ALL APPLICATIONS THE FOLLOWING ITEMS MUST BE SUBMITTED.

- This application (SBA Form 5), completed and signed

- Tax Information Authorization (IRS Form 8821,) completed and signed by each applicant, each principal owning 20 percent or more of the applicant business, each general partner or managing member, and each affiliate business. Affiliates include, but are not limited to, business parents, subsidiaries, and/or other businesses with common ownership or management

- Complete copies, including all schedules, of the most recent Federal income tax returns for the applicant business; an explanation if not available

- Personal Financial Statement (SBA Form 413) completed, signed, and dated by the applicant (if a sole proprietorship), each principal owning 20 percent or more of the applicant business, and each general partner or managing member

- Schedule of Liabilities listing all fixed debts (SBA Form 2202 may be used)

ADDITIONAL REQUIREMENTS FOR MILITARY RESERVIST ECONOMIC INJURY (MREIDL):

- A copy of the essential employee’s notice of expected call-up to active duty, or official call-up orders, or release/discharge from active duty

- A written explanation and financial estimate of how the call-up of the essential employee has or will result in economic injury to your business, and the steps your business is taking to alleviate the economic injury

- MREIDL Certification Form P-0002, which includes:
  - Your statement that the reservist is essential to the successful day-to-day operations of the business
Your certification that the essential employee will be offered the same or a similar job upon the employee’s return from active duty

The essential employee’s concurrence with your statements

ADDITIONAL INFORMATION MAY BE NECESSARY TO PROCESS YOUR APPLICATION. IF REQUESTED, PLEASE PROVIDE WITHIN 7 DAYS OF THE INFORMATION REQUEST.

- Complete copy, including all schedules, of the most recent Federal income tax return for each principal owning 20 percent or more, each general partner or managing member, and each affiliate

- If the most recent Federal income tax return has not been filed, a year-end profit-and-loss statement and balance sheet for that tax year

- A current year-to-date profit-and-loss statement

- Additional Filing Requirements (SBA Form 1368) providing monthly sales figures
**SBA MINIMUM INCOME LEVELS**

for Disaster Home/Renter Loan Consideration

(Households with income below these levels are referred directly to IHP by FEMA Customer Service Representatives.)

These tables do not apply to households with self-employment income.

Minimum Income Guidelines for the

48 Contiguous States and the District of Columbia

<table>
<thead>
<tr>
<th>Household Size</th>
<th>$/$Minimum Income Level</th>
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<tbody>
<tr>
<td></td>
<td>Week</td>
</tr>
<tr>
<td>1</td>
<td>417</td>
</tr>
<tr>
<td>2</td>
<td>420</td>
</tr>
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<td>6</td>
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<td>7</td>
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<td>8</td>
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</table>

for each over 8 add 108 468 5,610

**NOTE:** This table is as of 10/01/10. Tables are updated at the beginning of the fiscal year.

DCMS uses the Income Test tables based on when the business rules for the application are run and not based on the declaration date of the disaster.
APPENDIX 9

CANCELLATION CODES

Agency Cancellation

C10. Failure to complete and return all loan closing documents.

C11. Failure to satisfy all terms and conditions of the loan.

C12. Adverse change. - IHP referral.

C13. Adverse change. - Other.

C14. Subsequent recoveries exceed verified loss.

C15. Did not need all the funds. – (Agency Decision)

C16. Other reasons. – (Agency Decision)

Cancellation at Borrower's Request

C20. Adequate recovery from other sources.

C21. Reluctant to incur additional debt.

C22. Dissatisfied with loan terms and conditions.

C23. Dissatisfied with insurance requirements.

C24. Unwilling to pledge collateral.

C25. Did not need all the funds. – (Borrower Decision)

C26. Other reasons. – (Borrower Decision)

C27. Dissatisfied with loan interest rate (market rate). – (Borrower Decision)
APPENDIX 10

CATALOG OF OPTIONAL LOAN AUTHORIZATION TEXT

This appendix is reserved for the Catalog of Optional Loan Authorization Text for disaster loans (dated 04-06). All stipulations and conditions used in the LAA are included in the catalog.

Place your copy here for reference.
PPENDIX 11

RIGHT TO FINANCIAL PRIVACY

1. CREDIT INQUIRY LETTER

We must add the following paragraph to any credit inquiry letter whenever we provide it to a financial institution and the application includes an executed consent form:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-360. Pursuant to Section 1113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

2. RIGHT TO FINANCIAL PRIVACY ACT OF 1978

a. General.

Congress passed this Act (effective date May 10, 1979) to protect individuals from any unwarranted intrusions into their financial affairs by Government authorities. We must notify certain applicants and their principals that we have the right to access financial records and information necessary to process, service or foreclose a loan or loan guaranty. SBA disaster loan applications are designed to provide appropriate notice to the applicant and principals as required by the Act. Observance to this paragraph is necessary to protect financial institutions from liability when they furnish financial information.

Do not confuse this Act with the Privacy Act of 1974. They are two separate and distinct pieces of legislation.

b. Definitions.

Terms used in the Act have the following special meanings.

(1) Customer/Individual means a natural person, a proprietorship, a partnership of five or fewer partners, or a corporate officer, director, or shareholder in his/her individual capacity.

(2) Financial institutions mean participating banks, banks of account, creditor banks, savings and loan associations, credit unions, credit card issuers and production credit associations (PCAs). We do not consider credit bureaus, insurance companies, suppliers, or retailers as sources of financial records or financial institutions.
Financial records mean the actual records or copies of the records in a financial institution; a compilation, summary, or report derived from records; the actual records submitted for review or a written or verbal opinion resulting from the records.

Notice means the statement required by the Act given to all appropriate individuals associated with all applications.

Certify or Certification means the statement SBA must make in requesting information from a financial institution to the effect that the request complies with this Act. A single certification will be sufficient for the term of the loan or loan guaranty with regard to a specific customer.

c. Exclusions.

The Act specifically excepts or excludes (or is silent on) certain exchanges of information from the provisions of this legislation.

(1) Financial records of corporations are not included. However, financial records of corporate officers, shareholders, and directors as individuals are included.

(2) Financial records of partnerships having six or more partners are excluded (but not the information concerning the partners as individuals).

(3) Personal financial information supplied by the individuals directly to SBA is not covered. Requests for financial institutions to verify any such information are covered.

(4) Information received from nonfinancial institutions is excluded.

(5) Exchange of information between financial institutions is not covered.

d. Implementation.

A copy of "Statements Required by Laws" is attached (in tear-off fashion) to every application issued. The applicant must read and retain this. Do not accept an application for processing if the tear-off is still attached. If this occurs, detach and return it to the applicant (see paragraph 69). In addition to the Right to Financial Privacy Act of 1978, this document provides required notice of other legislation.

Telephone verification of financial information on individuals involved in any way with a loan application is considered an exchange of information and must be preceded by written certification.

The law regarding the exchange of credit information between SBA and IRS or any other Federal authority is complex. Therefore, you must refer all exchanges to Center Counsel.
OPINION OF GENERAL COUNSEL:

EQUAL CREDIT OPPORTUNITY ACT (ECOA) IN COMMUNITY PROPERTY STATES

DATE: July 25, 1994

TO: Bernard Kulik
   Associate Administrator for
   Disaster Assistance

FROM: Martin D. Teckler
      Deputy General Counsel

SUBJ: Equal Credit Opportunity Act and Community Property States

This is in response to your request of July 12, 1994 for our views with respect to the application of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1601 et seq., in community property states, such as California. You advise that one of the Disaster Area Offices of the Small Business Administration (“SBA”) requires spouses in a community property state to be co-borrowers on a disaster loan even if only one of the individuals actually applied for disaster assistance.1 (view the footnote) In our opinion, this is inconsistent with ECOA, and we note the following.

To implement ECOA, the Federal Reserve Board (“Board”) has promulgated regulations in 12 CFR Part 202 (“Regulation B”) which have equal applicability in community and noncommunity property states. We have also considered the Board’s Official Staff Commentary on Regulation B (“Commentary”). Under Section 202.8 of Regulation B, a creditor in a special purpose credit program (which includes SBA disaster financing) may obtain the signature of an applicant’s spouse or other person on an application or credit instrument (i.e., note) if the signature is required by federal or state law. We are not aware of a federal or state law which requires the applicant’s spouse to sign the application or note relating to SBA disaster assistance.

1 California law makes one spouse personally liable only for the “necessaries” debts incurred by the other spouse. (Case law in California has defined “necessaries” as that required to sustain life). See section 914 of the California Family Code which provides that a married person is personally liable for a debt incurred by the spouse during marriage if incurred for the necessaries of life. Section 910 provides that the community property is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt. Section 913 provides that the separate property of a married person is not liable for a debt incurred by the person’s spouse before or during marriage.
Section 202.7(d) of Regulation B prohibits a creditor from requiring the signature of the applicant’s spouse or other person other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor’s standards of creditworthiness for the amount and terms of the credit requested. We note the commentary on Section 202.7 of Regulation B:

“An applicant who requests individual credit relying on the income of another person (including a spouse in a noncommunity property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse’s separate income. If the applicant relies on the spouse’s future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse’s signature, but need not do so…”

With respect to unsecured credit, if an applicant is relying upon community property not under the applicant’s control (or is relying on the spouse’s separate property), the creditor may require the spouse’s signature on any documents required under state law to make the property available in case of default. If the applicant has control over sufficient community or separate property to meet the creditor’s standards of creditworthiness, the creditor cannot require the spouse or any other person to sign any credit instrument. With respect to secured credit, a creditor may require the signature of the applicant’s spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the collateral available to satisfy the debt in the event of default, such as an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings. With minor exception, SOP 50 30, appendix 23, incorporates these rules.

1. In your first example, the husband applies for disaster loan assistance, and the spouse does not sign the loan application. Damaged property is jointly owned by the spouses. The SBA loan officer bases repayment ability solely on the husband’s income and approves a disaster loan. Can SBA automatically require the spouse to be a co-borrower on this loan?

Answer. No. If the husband’s singular application supports the financing, the spouse cannot be asked to sign the application or the note. However, the spouse can be asked to sign any of the collateral documents to ensure that SBA obtains a valid lien on the collateralized property or to pass clear title in the event of default by the husband.

2. The wife applies for a disaster loan for rental property she owned prior to her marriage. The spouse does not sign the disaster loan application. The loan is approved on the wife’s repayment ability. Should SBA automatically require the spouse to be a co-borrower on the loan?

Answer. No. If the wife’s credit supports the loan assistance, SBA cannot require the spouse to sign the note. The marital relationship, by itself, does not authorize a creditor to require both spouses to be jointly and severally liable on a debt instrument.
3. The husband applies for disaster loan assistance, and the spouse does not sign the loan application. The SBA loan officer bases the applicant’s repayment ability on the husband’s reported income and denies the loan for lack of repayment ability. However, if the spouse’s income had been considered the loan would have been approved. Can SBA require the spouse to be a co-borrower?

Answer. No. It is up to the applicant to decide whether the spouse or another person will be a cosigner or a guarantor. In the decline letter, you can inform the applicant that the applicant’s resources alone do not support the grant of financial assistance by SBA, but it is up to the applicant and spouse to provide you with the spouse’s offer to sign the note.

In your memorandum, you add additional inquiries. In joint ownership cases, can SBA automatically require the spouse to be a co-borrower? No. Does this interpretation apply to both home and business disaster loans? Yes. If an applicant does not meet the lender’s standards of creditworthiness and the personal liability of another party is necessary, the lender may ask the applicant to obtain a cosigner or guarantor, but cannot require that it be the spouse. If husband and wife voluntarily make a joint application, you may require both to sign the note and other credit instruments.

To assist your Disaster Area Offices, enclosed are several copies of a pamphlet, “Signature Rules in Community Property States: Regulation B”, prepared and issued by the Board.

Enclosure
Signature Rule... in Community Property States: Regulation B

To help ensure the equitable treatment of all applicants in credit transactions, the Equal Credit Opportunity Act and Regulation B prohibit creditors from routinely requiring that an applicant's spouse (or anyone other than the applicant or joint applicant) sign a promissory note or other debt instrument when the applicant is creditworthy in his or her own right. The regulation has special rules that apply to credit applicants who reside in community property states or who are relying on property located in such states. (The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Wisconsin, and Texas.) This pamphlet can help you understand those rules.
The Two General Principles

Two general principles apply throughout Regulation B’s signature requirements.

First, you may not require a signature other than the applicant’s on the note or similar debt instrument if the applicant applies for individual credit and qualifies under your standards for the amount and terms of the credit requested.

Second, you have more latitude in asking for signatures on security documents required by your state law in order for you to reach property used as collateral (for example, jointly-owned real estate). To understand the general rules, you must distinguish between debt instruments and security documents.

A debt instrument, such as a promissory note, is a legally binding admission that a debt exists. Each signer is personally liable for the debt.

A security document, such as a mortgage or security agreement, creates a more limited obligation—one that allows the lender to reach the signer’s interest in property used as collateral, in the event of a default. After default and the sale of the property, if an amount remains due to the creditor, a person who has signed only a security agreement is not obligated to pay the deficiency.

Special Signature Rules in Community Property States

Rules for Unsecured Credit

If an applicant for unsecured credit is relying upon community property not under the applicant’s control (or is relying on the spouse’s separate property), then you may require the spouse’s signature on any documents required by your state law to make the secured instrument available in case of default. On the other hand, if the applicant has control over the community or separate property to meet your standards of creditworthiness, then you must not require the applicant’s spouse or any other person to sign any credit instrument.

Rules for Secured Credit

In a secured credit transaction, if the applicant is creditworthy, you may not require any person other than the applicant to sign the promissory note. However, Regulation B permits you to obtain the signature of the applicant’s spouse (or any other person) on a mortgage or other security agreement if state law requires that signature to create a valid lien on the property offered as security.

If you are entitled to a non-applicant’s signature on a security document, and you use a combination debt and security instrument, the document must either:

- state that the non-applicant’s signature functions only to create a valid security interest or to make property available in case of default, or
- segregate the security agreement from the note to make clear that the non-applicant is signing only to give a security interest rather than to undertake a credit obligation.

Rules Applicable to Both Secured and Unsecured Credit

If an applicant does not meet your standards of creditworthiness and the personal liability of another party is necessary, you may ask the applicant to obtain a cosigner or guarantor. Although the applicant may choose the spouse to sign, you cannot require that it be the spouse.

In a business credit transaction, if a guarantor is required, these same signature rules apply; for example, you may not routinely require that the guarantor’s spouse join in the guarantee.

If two applicants voluntarily make a joint application, you may require both to sign the note and other credit instruments.

For Further Information

The following chart summarizes the rules discussed above. For further information contact your primary federal regulator.
APPENDIX 13

PRE-DISASTER MITIGATION LOAN PROGRAM (PDMLP)

GENERAL

Effective June 16, 2003 SBA instituted the Pre-Disaster Mitigation Loan Program (PDMLP) as a pilot. This new program encourages disaster preparedness rather than relying solely on response and recovery. This new program allows ODA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their property from future disaster-related damage. The following addresses the differences from the existing disaster program and the changes that are being made to effectively implement the PDMLP.

a. PDMLP Declaration Numbers - SBA will publish, and the Centers will receive a copy of a notice in the Federal Register announcing the availability of Pre-Disaster Mitigation Loans. The notice will designate a 30-day application filing period with a specific opening date and filing deadline, as well as the locations for obtaining and filing loan applications. The applicable interest rate for these loans will also be stated on the Federal Register notice.

b. Filing Period – All applications must be postmarked on or before the filing deadline. SBA will not accept any applications postmarked after the filing deadline. All such loan applications must be returned to the loan applicant. SBA may announce additional filing periods each year, depending on the availability of program funds.

c. Screening – To apply for a Pre-Disaster Mitigation Loan, a business must submit a complete Pre-Disaster Mitigation Small Business Loan Application prior to the filing deadline. Complete applications postmarked or presented to SBA after the filing period is announced in the Federal Register but prior to the filing period opening date may be held until the filing period begins. However, these applications must be stamped as being received on the first day of the filing period. Applications received and postmarked after the application filing period ends must be returned to the applicant. The application should be reviewed based upon the filing requirements listed in subparagraph d.

d. Acceptable applications must contain the information listed under items 1 through 4 of the “Filing Requirements” as follows.

1. Application (SBA Form 5M) is substantially complete, signed, and dated by each applicant, IN INK.

2. IRS Form 8821 signed and dated (from each required individual and/or entity – including affiliates).

3. A statement from the local or State coordinator confirming the business’ proposed mitigation measure is in accordance with the specific priorities and goals of the Predisaster community (as defined by FEMA) in which the business is located.

4. A cost estimate/contractor’s bid and outline of the proposed mitigation measure.

e. Accepted Pre-Disaster Mitigation Loan Applications must be input the same day they are received.

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For this pilot program, the following changes will apply:

1. Personal Property, Real Estate, Refinancing, and Bridge loan uses of proceeds are not eligible.

2. Pre-Disaster Mitigations loans will be low rate only.

3. There are no declared counties under this program and the type of declaration will automatically default to the “Agency” declaration.

4. ODA is required to report the results of this pilot program to Congress, once the pilot program is completed. The following information is necessary for that report: Type of Business (NAICS Code), Communities Impacted (City, County and/or State fields for the business address).

5. The type of disaster damage being mitigating against must be indicated. The list of values will be:
   
   a. Wind Damage
   b. Flooding
   c. Earthquake
   d. Fire Protection
   e. Mudslides
   f. Other

6. The total project cost must be included.

   f. **Obligating Priority** – As each loan request is approved, Headquarters staff will match the approved loan number and amount against the ODA Obligating Priority Log. Funds will be released when available. Please note that the obligating order will be determined using a random selection process and will not necessarily follow the loan numbers sequentially (especially on multiple case files accepted on the same day). ODA will notify the PDC on a daily basis of the loans that can be obligated.

Eligibility considerations include:

1. As of the date a business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA, that business, along with its affiliates, **must** be a small business concern as defined in 13 CFR Part 121.

2. The business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. In other words, if the business, along with its affiliates and owners, is found to have credit elsewhere, they are not eligible to be considered for a Pre-Disaster Mitigation Loan.

3. The business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year.

4. If the business is proposing a mitigation measure that protects against a flood hazard, the location of the business that is the subject of the mitigation measure...
must be located in a Special Flood Hazard Area (SFHA). PDMLP loan funds may be used for relocation of a business if their commercial real property (building) is located in an SFHA, and the business relocates outside the SFHA, but remains in the community.

(5) For businesses that own and lease out real property, the mitigation measure must be for protection of a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).

(6) A business together with its affiliates may borrow up to a maximum $50,000 each fiscal year under this program.

(7) A business receiving funds during one fiscal year may reapply for funds in a subsequent fiscal year.

Additional exclusions from program eligibility are consistent with our current physical disaster loan program and are included in 13 CFR §123.404 of the new regulations.

g. **Loss Verification** – The loan applicant’s mitigation project cost estimate/contractor’s bid, etc. must be reviewed by the PDC Loss Verification Department for reasonableness in cost and reasonableness of the measure as it relates to appropriate hazard mitigation. The rule of two applies to this review and must include a summary of the LV’s recommendation as to reasonableness of cost and purpose. Generally, a site visit to make such determinations is not anticipated. However, management has the discretion to authorize a site visit if considered necessary.

The purpose of the LV’s review is to provide the loan officer with sufficient information to make a loan decision in the appropriate amount and for an appropriate purpose.

h. **Loan Processing and Obligating** – Pre-Disaster Mitigation Loan Applications will be processed to a decision in accordance with normal processing procedures. Processed loan applications with decline and withdrawal decisions should be processed to their conclusion and the applicant notified of the processing decision in the usual manner. However, for loan **approval** decisions, the obligating mechanism has been modified to block obligation of these loans until Headquarters provides the PDC with a notification of “Obligating release.”

Our standard requirements will apply for loan terms, e.g., standard 4-month payment deferment period and prior injection of funds (for mitigation measures in excess of the maximum loan amount). Please note that loan applicants requesting funds for mitigation projects requiring more than the maximum loan amount of $50,000 must provide documentation to show that the additional/excess funding for the project is in place prior to PDMLP loan approval. **NOTE:** The **total amount of the project will be used as the uncompensated physical loss for the credit elsewhere determination.**

i. **Obligating Order of Reconsiderations, Appeals, Increases and Reinstatements** – Reconsiderations, Appeals, Increases and Reinstatement requests must be date-stamped
as they are received, and entered into DCMS. If any of the above actions are approved, their obligating order will be determined by the last date received, and ultimately, in accordance with the obligating priority log. Headquarters will notify the PDC of the order in which each of these types of requests can be obligated.

j. **Loan Approvals Not Obligated Due to Lack of Funds** – These loans will be given priority status, based on the original acceptance date, when more program funds become available. However, updated financial information should be required if more than 6 months has elapsed since the loan approval date. Again, Headquarters will maintain the record of obligating order of such applications and will advise the originating office accordingly.

Loan approvals not obligated due to lack of funds should be withdrawn. Withdraw code 65 (loan approved, but withdrawn due to lack of program funds) addresses this issue. A standard letter is available to advise approved loan applicants, whose loans cannot be obligated, that their application will be given priority status, based on the original acceptance date, once more funds become available. In addition, a standard letter is also available to advise such applicants that new funds are becoming available and that their loan application will be reactivated. The originating office should advise these applicants in this letter of the need for any additional financial information, confirmation that the project bid price still applies or any other discretionary information that is deemed necessary. Loan approvals “not obligated due to lack of funds” and reactivated when new funds become available will not be required to have their mitigation plans re-certified by a State of local certifying official.

k. **Loan Closing Documents** – The LAA is changed to exclude references to disaster damage (both secured and unsecured) and to identify the loan as a Pre-Disaster Mitigation Loan.

l. **Disbursements** – Standard disbursement procedures should be used.

m. **Progress Inspections** – On-site progress inspections or final inspections of a completed project, must be performed on all loans of $25,000 or more.
INDEX

This index used key words to refer to the indicated paragraph or appendix. CFR references (121.xxx ) refer to 13 CFR.

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