

JONES WALKER'S GUIDE TO FAQs ABOUT DISASTER ASSISTANCE THROUGH SMALL BUSINESS ADMINISTRATION LOANS

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I. OVERVIEW OF SMALL BUSINESS ADMINISTRATION

In addition to the assistance provided to disaster area victims by the Federal Emergency Management Agency (“FEMA”), the Small Business Administration (“SBA”) offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to businesses in the affected areas to help them recover from economic injury caused by such disasters.¹

Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents. These disasters are sudden events that cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim’s property.

On September 2, 2008, the federal government issued a disaster declaration for Louisiana for damages caused by Hurricane Gustav. A disaster declaration was issued for Alabama on September 10, 2008 for damages caused by Hurricane Gustav. On September 13, 2008, a disaster declaration was issued for Texas and Louisiana for damages caused by Hurricane Ike.

1. How are disaster declarations made?²

- There are four ways in which disaster declarations are issued, making SBA disaster loans possible:
 - 1) The President declares a major disaster, or declares an emergency, and authorizes federal assistance, including individual assistance.
 - 2) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property.
 - 3) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.
 - 4) SBA makes an economic injury declaration in reliance on a state certification that at least five small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms.

¹ 13 CFR § 123.2.

² 13 CFR § 123.3.

2. What is a disaster area and why is it important?³

- Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans.
- In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions. However, with respect to major disasters that authorize public assistance only, SBA shall not make economic injury disaster loans in counties contiguous to the disaster area.
- Disaster declarations issued by the SBA include contiguous counties for both physical and economic injury assistance.
- “Contiguous counties” or “other political subdivisions” are those land areas that abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

3. What kinds of loans are available?⁴

- SBA offers three kinds of disaster loans:
 - 1) Physical disaster home loans
 - 2) Physical disaster business loans
 - 3) Economic injury business loans (“EIDLs”)
- SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA’s share in that loan may not exceed 90 percent.

4. What does SBA look for when considering a disaster loan applicant?⁵

- There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character.
- SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any disposition of assets owned by you.

³ 13 CFR § 123.4.

⁴ 13 CFR § 123.5.

⁵ 13 CFR § 123.6.

- SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

5. Are there restrictions on how disaster loans can be used?⁶

- You must use disaster loans to restore or replace your primary home and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future disasters.
- An EIDL may only be used for working capital necessary to alleviate specific economic injury, not exceeding that which the business could have provided had the injury not occurred.

6. Does SBA charge any fees for obtaining a disaster loan?⁷

- No. SBA does not charge points, closing, or servicing fees of any disaster loan.
- You will be responsible for payment of any closing costs owed to third parties.
- If your loan is made in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you.

7. What happens if you do not use loan proceeds for the intended purpose?⁸

- When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds.
- If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication.
- Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization.

⁶ 13 CFR § 123.7.

⁷ 13 CFR § 123.8.

⁸ 13 CFR § 123.9.

- If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.
- If SBA learns that you may have misapplied your loan proceeds, SBA will notify you. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds.
- If SBA finds wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution or civil or administrative action.

8. What happens if you cannot use your insurance proceeds to make repairs?⁹

- If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs.
- If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

9. Does SBA require collateral for any of its disaster loans?¹⁰

- Generally, SBA does not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of \$10,000 or less, or an economic injury disaster loan of \$5,000 or less. For loans larger than these amounts, you will be required to provide available collateral.
- Sometimes a borrower will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed \$10,000 and all economic injury disaster loans to see if they exceed \$5,000.
- SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

⁹ 13 CFR § 123.10.

¹⁰ 13 CFR § 123.11.

10. Are books and records required?¹¹

- You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of three years after you received your final disbursement of loan proceeds.
- If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies and tax returns.
- You must retain applicable books and records for three years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first.
- You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must permit SBA and any participating financial institution to inspect and appraise your assets.

11. How does the Federal Debt Collection Procedures Act of 1990 apply?¹²

- Under the Federal Debt Collection Procedures Act of 1990, a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States generally is not eligible to receive physical and economic injury disaster loans.
- The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans upon a demonstration of good cause.¹³
- The waiver determination is a final, non-appealable decision.
- The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

12. What if you change your mind?¹⁴

- If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C.

¹¹ 13 CFR § 123.12.

¹² 13 CFR § 123.14.

¹³ Good cause is defined in 13 CFR § 123.14.

¹⁴ 13 CFR § 123.15.

1601, and Regulation Z of the Federal Reserve Board, 12 CFR § 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

13. How are loans administered and serviced?¹⁵

- If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA.
- If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

14. Do other Federal requirements apply?¹⁶

- As a condition of disbursement, you must be in compliance with certain requirements set forth in 13 CFR §§120.170 – 120.175 relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations.

15. Can you request an increase in the amount of a physical disaster loan?¹⁷

- SBA will consider your request for an increase in your loan if you can show that the eligible cost of repair or replacement of damages increased because of events occurring after the loan approval that were beyond your control.
- An “eligible cost” is one which is related to the disaster for which SBA issued the original loan.

16. Can you request an increase in the amount of an economic injury loan?¹⁸

- SBA will consider your request for an increase in the loan amount if you can show that the increase is essential for your business to continue and is based on events occurring after SBA approved your original loan which were beyond your control.
- Your request for an increase in the loan amount must be related to the disaster for which the SBA economic injury disaster loan was originally made.

¹⁵ 13 CFR § 123.16.

¹⁶ 13 CFR § 123.17.

¹⁷ 13 CFR § 123.18.

¹⁸ 13 CFR § 123.19.

17. How long do you have to request an increase in the amount of a physical disaster loan or economic injury loan?¹⁹

- You should request a loan increase as soon as possible after you discover the need for the increase, but not later than two years after SBA approved your physical disaster or economic injury loan.
- After two years, the SBA Associate Administrator for Disaster Assistance may waive this limitation after finding extraordinary and unforeseeable circumstances.

18. What is a mitigation measure?²⁰

- A “mitigation measure” is something done for the purpose of protecting real and personal property against disaster related damage. You may implement mitigation measures after a disaster to protect against recurring disaster related damage, or before a disaster occurs to protect against future disaster related damage.

II. PHYSICAL DISASTER HOME LOANS

1. Who is eligible to apply for a physical disaster home loan?²¹

- You are eligible to apply for a physical disaster home loan if you:
 - 1) Own or occupy your primary residence and have suffered a physical loss to your primary residence, personal property, or both; or
 - 2) Do not own your primary residence, but have suffered a physical loss to your personal property. Family members sharing a residence are eligible if they are not dependents of the owners of the residence.
- Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by the SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

2. When is someone not eligible for a physical disaster home disaster loan?²²

- You are not eligible for a home disaster loan if:

¹⁹ 13 CFR § 123.20.

²⁰ 13 CFR § 123.21.

²¹ 13 CFR § 123.100.

²² 13 CFR § 123.101.

- 1) You have been convicted, during the past year, of a felony during and in connection with a riot or civil disorder or other declared disaster;
- 2) You acquired voluntarily more than 50% ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;
- 3) Your damaged property can be repaired or replaced with the proceeds of (1) insurance, (2) gifts, or (3) other compensation including condemnation awards (with one exception), these amounts must either be deducted from the amount if the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan. The one exception applies to amounts received under the Individuals and Household Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan;
- 4) SBA determines that you assumed the risk such as not providing or maintaining flood insurance in an area in which such insurance was mandated;
- 5) Your damaged property is a secondary home. However, if such property was rented out before the disaster and the property would not constitute a “residence” under the provisions of Section 208A of the Internal Revenue Code²³, you may be eligible for a physical disaster business loan;
- 6) Your damaged property is the type of vehicle normally used for recreational purposes, such as motor homes, aircraft and boats;
- 7) Your damaged property consists of cash or securities;
- 8) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;
- 9) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;
- 10) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

²³ 26 U.S.C. 280A

- 11) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and without significant business justification is located seaward of mean high tide or entirely in or over water; or
- 12) You voluntarily decide to relocate outside the business area in which the disaster occurred, and there are no special or unusual circumstances leading to your decision. Business area is defined as the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or parish in which your damaged home is located.

3. What circumstances justify relocating?²⁴

- The SBA may approve a loan if you intend to relocate outside the business area in which a disaster has occurred if your relocation is caused by such special or unusual circumstances as:
 - 1) Demonstrable risk that the business area will suffer future disasters;
 - 2) A change in employment status, such as job loss, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs;
 - 3) Medical reasons; or
 - 4) Special family considerations which necessitate a move outside the business area.

4. What happens if you are forced to move from your home?²⁵

- If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. Accordingly, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses or personal property and eligible refinancing.

5. What interest rate will you pay on your home disaster loan?²⁶

- If you can obtain credit elsewhere, your interest rate is 5.375%.

²⁴ 13 CFR § 123.102.

²⁵ 13 CFR § 123.103.

²⁶ 13 CFR § 123.104.

- If you cannot obtain credit elsewhere, your interest rate is 2.687%.
- “Credit elsewhere” means that with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms.
- If you cannot obtain credit elsewhere, you may also be able to borrow from SBA to refinance existing recorded liens against your damaged real property.

6. How much can you borrow with a home disaster loan and what limits apply on use of funds and repayment terms?²⁷

- 1) \$40,000 for repair or replacement of household and personal effects;
 - 2) \$200,000 for repair or replacement of a primary residence including upgrading in order to meet minimum standards of safety and decency or current building code requirements. Repair or replacement of landscaping and/or recreational facilities cannot exceed \$5,000;
 - 3) \$200,000 for eligible refinancing purposes; and
 - 4) 20% of the loan amount, not including refinancing, up to a maximum of \$48,000 for mitigation (See Section 8 below).
- You may not use the loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.
 - SBA determines loan maturity and repayment terms based on your needs and ability to pay, generally in equal installments beginning 5 months from the date of the loan and taking into consideration fluctuating incomes. The maximum maturity for a home disaster loan is 30 years and there is no penalty for prepayment of home disaster loans.

7. What is eligible refinancing?²⁸

- 1) If your primary residence is totally destroyed or substantially damaged, and you “do not have credit elsewhere,” SBA may allow you to refinance recorded liens or encumbrances on your home.
- 2) Your home is “totally destroyed or substantially damaged” if it has suffered uninsured or otherwise uncompensated damage, which at the time of the disaster, is either:

²⁷ 13 CFR § 123.105.

²⁸ 13 CFR § 123.106.

- i. 40% or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or
 - ii. 50% or more of its market value or replacement cost at the time of the disaster, **not** including land value, whichever is less.
- 3) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of \$200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

8. How much can you borrow for post-disaster mitigation for your home?²⁹

- For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20% of the amount of your approved home disaster loan to repair or replace your damaged primary residence and personal property.

9. What is the filing deadline to apply for a physical disaster home loan?

- Parties impacted by Hurricanes Gustav and Ike should contact the SBA for information regarding application deadlines.

III. PHYSICAL DISASTER BUSINESS LOAN

1. Who is eligible to apply for a physical disaster business loan?³⁰

- Almost any business concern (sole proprietorship, partnership, corporation, limited liability company or other legal entity recognized by state law) or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan.
- Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan.
- If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical disaster business loan to repair the property. In all other cases, the owner of the building is the eligible applicant.
- Damaged vehicles, of the type normally used for recreational purposes, such as motor homes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if

²⁹ 13 CFR § 123.107.

³⁰ 13 CFR § 123.200.

you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

2. Who is not eligible for a physical disaster business loan?³¹

- You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you, personally, fit into any of the categories in Section II Question 2 above.
- “Agricultural enterprise” means a business primarily engaged in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agriculture-related industries.
- If a damaged business has both an agricultural component as well as a non-agricultural component, only those damages to the non-agricultural component would be eligible for SBA physical disaster assistance.
- If your business is going to voluntarily relocate outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan.
- If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation involuntary and eligible for a loan. Such circumstances include:
 - 1) The elimination or substantial decrease in the market for your products or services as a consequence of the disaster;
 - 2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;
 - 3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;
 - 4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;
 - 5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expense for your business in the business area;
 - 6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

³¹ 13 CFR § 123.201.

- 7) Other factors which undermine the economic viability of your business area.
- You are not eligible if your business is engaged in any illegal activity.
 - You are not eligible if you are a government owned entity, except for a business owned and controlled by a Native American Tribe.
 - You are not eligible if your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

3. How much can you borrow with a physical disaster business loan?³²

- Disaster business loans, including both physical disaster and economic injury loans to the same borrower cannot exceed the lesser of the uncompensated physical loss and economic injury or \$1.5 million.
- Physical disaster loans may include amounts to meet current building code requirements.
- If your business is a major source of employment, SBA may waive the \$1.5 million limitation.
 - 1) “A major source of employment” is defined as a business concern which has one or more locations in the disaster area which:
 - i. Employed 10% or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county or parish), provided that the commuting area does not extend more than 50 miles from such community; or,
 - ii. Employed 5% of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or
 - iii. Employed no less than 250 employees within the disaster area.
 - 2) SBA will consider waiving the \$1.5 million loan limit only if:
 - i. Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the

³² 13 CFR § 123.202.

disaster, and a loan in excess of \$1.5 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

- ii. You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described above in Section II Question 5) to alleviate your physical damage and economic injury.
- 3) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business property must be totally destroyed or substantially damaged, which means:
- 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 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 land) and damaged machinery and equipment.
- 4) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed \$5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

4. What interest rate will your business pay on a physical disaster business loan and what are the repayment terms?³³

- If you can obtain credit elsewhere, your interest rate is 6.557%.
 - If you cannot obtain credit elsewhere, your interest rate is 4.000%.
 - The maturity of your loan depends upon your repayment ability, but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.
 - Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the note. SBA will consider other payment terms if you have seasonal or

³³ 13 CFR § 123.203.

fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

5. How much can your business borrow for post-disaster mitigation?³⁴

- For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20% of the amount of your approved physical disaster business loan to repair or replace your damaged business real estate and other business assets.

6. What is the filing deadline for a business disaster loan?

- Parties impacted by Hurricanes Gustav and Ike should contact the SBA for information regarding application deadlines.

IV. ECONOMIC INJURY DISASTER LOANS

1. Who is eligible to apply for an EIDL?³⁵

- Only small businesses suffering substantial economic injury as a direct result of a declared disaster with no credit available elsewhere are eligible for EIDLs. Agricultural enterprises are not eligible for EIDLs; however, small agricultural cooperatives and producer cooperatives are eligible. An agricultural enterprise is a business primarily engaged in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agricultural related industries.
 - 1) *Small Business:* Whether or not a business is “small” depends on either the number of employees or annual receipts in millions of dollars as specified in 13 C.F.R. §121.201, a copy of which is attached hereto as Exhibit B, and is determined at the time the disaster commenced. These size standards for determining whether a business is “small” vary depending on the industry classification of the business under the North American Industry Classification System (“NAICS”). To determine what industry a small business falls under, a copy of the NAICS manual containing definitions for each industry may be ordered at <http://www.ntis.gov/products/bestsellers/naics.asp>.
 - 2) *Substantial Economic Injury:* Substantial economic injury is such that a business is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. Indicators of economic injury might be a larger than normal volume of receivables, a lower sales

³⁴ 13 CFR § 123.204.

³⁵ 13 CFR § 123.300.

volume, slow inventory turnover, development of delay trade payables, current accruals and debt payments. Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

- 3) *No Credit Available:* A business is considered to have no credit available elsewhere if the business, its affiliates and its principal owners (owning a 20% or more ownership interest) have used all reasonably available funds and are unable to obtain credit elsewhere.

2. When would a business not be eligible to apply for an EIDL?³⁶

- To qualify, a business must (i) be small, (ii) suffer substantial economic injury as a result of a declared disaster, and (iii) have no credit available elsewhere.
- However, if any of the principals of the business or the business itself are not eligible for (i) a home disaster loan for any reason specified in Section II, Question 2 or (ii) a physical disaster loan for any reason specified in Section III, Question 2 the business is not eligible for EIDL.
- Additionally, a business is ineligible for EIDL if it is:
 - 1) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental when the disaster occur);
 - 2) A non-profit or charitable concern;
 - 3) A consumer or marketing cooperative;
 - 4) Deriving more than one-third of gross annual revenue from legal gambling activities;
 - 5) A loan packager who earns more than one-third of its gross-annual revenue from packaging SBA loans;
 - 6) Principally engaged in teaching, instructing, counseling, or indoctrinating religious beliefs, whether in a religious or secular setting; or
 - 7) Principally engaged in political or lobbying activities.

³⁶ 13 CFR § 123.301 (See also 13 CFR §123.101; 13 CFR §123.201).

3. What is the interest rate on an EIDL?³⁷

- Currently, the interest rate is 4% per annum. Interest rates will never exceed 4%.

4. How can a business spend an EIDL?³⁸

- An EIDL may only be used for working capital necessary to alleviate specific economic injury, not exceeding that which the business could have provided had the injury not occurred.
- Loan proceeds may not be used to:
 - 1) Refinance indebtedness which the business incurred prior to the disaster event;
 - 2) Make payments or loans owned by another federal agency (including SBA) or a small business investment company licensed under the Small Business Investment Act;
 - 3) Pay directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;
 - 4) Repair physical damage; or
 - 5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance or services for the business.

5. What is the filing deadline for applications for EIDL?³⁹

- Parties impacted by Hurricanes Gustav and Ike should contact the SBA for information regarding application deadlines.

³⁷ 13 CFR § 123.302; Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A).

³⁸ 13 CFR § 123.303.

³⁹ Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A).

6. How much money may a business borrow?⁴⁰

- EIDL amounts are limited to \$1,500,000.00. The actual amount of each loan, up to the maximum, is limited to the actual economic injury as calculated by the SBA, not compensated by business interruption insurance or otherwise, and beyond the ability of the business and its owners (owning a 20% or more interest) to provide. The \$1,500,000.00 statutory limit applies to the combination of both EIDL and Business Physical Disaster Loans, and also applies to all such loans to affiliates of the business. If the business is a major source of employment, SBA has the authority to waive the \$1,500,000.00 statutory limit.

7. Must a business sell all of its assets not used in regular business operations in order to receive an EIDL?⁴¹

- The SBA will review the availability of assets to determine if all or part of the economic injury might be remedied by using such assets. SBA requires the business and its principal owners to use their resources to overcome economic injury to the greatest extent possible without causing hardship.

8. If a business borrows from a bank, is it still eligible for SBA assistance?⁴²

- Private credit sources must be used to the fullest extent possible to overcome the economic injury. The SBA can provide EIDL assistance only to the extent that the business and its principals cannot recover by using its own resources and normal lending channels.

9. Is collateral required for an EIDL?⁴³

- Collateral is required for all EIDL loans over \$5,000. SBA takes real estate as collateral where it is available. The SBA will not decline an EIDL request solely because available collateral will not adequately secure the loan, and a business will not be required to pledge more collateral than is necessary. The SBA may decline a loan if a business has collateral available but refuses to pledge it.

⁴⁰ Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A).

⁴¹ See http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴² See http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴³ See Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A); http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

10. What are the loan terms?⁴⁴

- Loan terms may be up to a maximum of 30 years. The SBA will assess the financial situation of a business and will set loan terms on the needs of the business and its repayment ability.

11. May a borrower expand its business or purchase a new line of inventory with an EIDL?⁴⁵

- No.

12. Are religious and non-profit organizations eligible for an EIDL?⁴⁶

- No. Only profit-oriented small businesses and small agricultural cooperatives are eligible.

13. How quickly will a business know if its EIDL application is approved?⁴⁷

- Decisions on applications are typically made within 21 days of receipt but may be longer depending on the volume of applications. Incomplete information on an application is the biggest cause of delay.

14. Is insurance required to get a loan?⁴⁸

- Yes. Borrowers of EIDLs over \$5,000 must purchase and maintain full hazard insurance for the life of the loan. Borrowers whose property is located in a special flood hazard area must purchase and maintain flood insurance for the full insurable value of the property for the life of the loan.

⁴⁴ See Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A); http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴⁵ See http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴⁶ See http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴⁷ See http://www.sba.gov/disaster_recov/loaninfo/ecoinjury.html.

⁴⁸ See Fact Sheet about U.S. Small Business Administration Disaster Loans Declarations: LA-00002, Mississippi #10178/#10179, and Alabama #10180/#10181 (Attached hereto as Exhibit A).

V. HOW TO APPLY FOR A SBA DISASTER LOAN

1. Complete and Return SBA Application⁴⁹

- *Overview*

- 1) Individuals must obtain a FEMA Registration ID number before applying for a home disaster loan. If the claim is referred to SBA by FEMA, an application packet is sent to an individual.
 - i. All forms for business physical disaster loans/EIDLs are attached hereto as Exhibit C and may be obtained from the SBA website at http://www.sba.gov/disaster_recov/loaninfo/dloanassit.html. As most businesses suffering physical damage will also suffer economic injury, any small business applying for relief will want to satisfy all requirements for both business physical disaster loans and EIDLs.

- *Filing Requirements for Home Disaster Loans:*

- 2) Individuals that are homeowners or renters must register with the Federal Emergency Management Agency to obtain a FEMA Registration ID Number by calling 1-800-462-7585 (1-800-462-7585 for the speech impaired).
- 3) An individual's claim will be reviewed by FEMA and if certain income levels are met, FEMA will refer the claim to SBA.
- 4) An application packet, including SBA Form 5C, will be mailed to an individual referred to the SBA by FEMA. Application packets will include all materials required by the SBA for a Home Disaster Loan. These materials may not be downloaded or printed online.

- *Filing Requirements for All Business Physical Damage and Economic Injury Loans:*

- 1) SBA Form 5.
- 2) Copies of applicant's 3 most recent Federal Income Tax Returns, including all schedules. If this is a new business that has not filed 3

⁴⁹ All information regarding filing requirements contained in Section V(A) confirmed in telephone conference with Tom Stoner, U.S. Small Business Administration, Disaster Area Office 3, Telephone No. (817)868-2300 (extension 3185). Copies of all forms required for filing are attached hereto as Exhibit C and may be downloaded and printed at http://www.sba.gov/disaster_recov/loaninfo/dloanassit.html.

Federal Tax Returns, submit the ones applicant has filed. Also, complete and sign the Tax Information Authorization (IRS Form 8821). Sole proprietors need only submit the IRS Form 8821. SBA will contact an applicant if additional information (i.e., forecasts, etc.) is needed.

- 3) A current (dated within 90 days of application) business balance sheet (you may use the Personal Financial Statement (SBA Form 413) if you are a sole proprietorship to satisfy this requirement), a current profit and loss statement, and a current schedule of liabilities (SBA Form 2202 should be used to complete the schedule of liabilities.)
 - 4) For each owner owning 20% or more of the applicant and each general partner (regardless of its ownership interest), a current (dated within 90 days of application) personal financial statement (SBA Form 413 should be used for this purpose). Business Entities (except sole proprietorships) falling within this requirement must also submit a complete copy, including all schedules, of the entity's most recent Federal Income Tax Return.
 - 5) A complete copy, including all schedules, of the latest Federal Income Tax Return for each affiliate. Affiliates include, but are not limited to business parents, subsidiaries, or other businesses with common ownership or management. An authorized individual must complete and sign the IRS Form 8821 for each Affiliate.
- *Additional Requirements for Physical Damage*⁵⁰
 - 1) Prepare and have available for SBA's Loss Verifier a brief description of damage to real estate and business contents.
 - 2) If applicant's insurance covers all or a part of this loss (regardless of the current status of your claim), provide the name and telephone number of your agent and/or claims adjuster. Also, include the policy number and the name of the insurance company. If available, include a copy of the applicant's proof of loss and a copy of the declaration page of its insurance policy.
 - *Additional Requirements for Economic Injury*
 - 1) Submit SBA Form 1368, Additional Filing Requirements – Economic Injury Disaster Loan (EIDL).
 - 2) Provide a brief explanation of the economic loss caused by the declared disaster. Include an explanation of how the loan funds would be used.

⁵⁰ Applicants are no longer required to submit an SBA Form 739A (Verification of Business Property).

- If SBA approves an applicant's loan, SBA may require additional information before loan closing. SBA will advise the applicant, in writing, of what documents are needed.
- All forms required for any SBA Loan may be downloaded at http://www.sba.gov.disaster_recov/loaninfo/dloanassit.html. SBA will help you complete your application and answer specific questions. Applicants may call SBA toll-free at 1-800-659-2955 or (TTY) 1-800-877-8339. Additionally, loan officers are available at a disaster location to assist applicants. A list of disaster locations is attached hereto as Exhibit D. In the event an applicant is unable to provide any of the following (i) Federal Income Tax Returns (for the applicant, any 20% owner and any affiliate), (ii) current business balance sheet, and/or (iii) current profit and loss statement due to a loss of records caused by damage from Hurricanes Gustav and Ike, the applicant should provide all requisite IRS and SBA forms listed above with a cover letter explaining its inability to provide certain business or tax records as a result of the damage caused by Hurricanes Gustav and Ike.
- Completed applications may be dropped off at any SBA disaster location (See Exhibit D for list of disaster locations) or mailed to:

U.S. Small Business Administration
 Disaster Area 3 Office
 14925 Kingsport Rd.
 Fort Worth, TX 76155-2243⁵¹

2. Verification of Losses and Review of Application⁵²

- SBA will check your application for completeness and inform the applicant if any additional information is required.
- A SBA loss verifier will make an appointment with the applicant to inspect the disaster-damaged property and to make an estimate of the cost to fully repair or replace the damaged property.
- Following an inspection by a SBA loss verifier, a SBA loan officer will contact the applicant to discuss the application and make a preliminary recommendation. This is not the final decision. After a supervisor reviews the recommendation, SBA will mail an applicant written notice of its decision.

⁵¹ Applications must be mailed or delivered to a disaster location and MAY NOT be faxed. To expedite the SBA review process, applicants are encouraged to mail SBA applications directly to SBA Disaster Office 3.

⁵² See http://www.sba.gov.disaster_recov/loaninfo/dloanassit.html.

- An approval or decline decision is typically given within three weeks after receipt of a completed loan application. However, this may vary depending on the volume of applications.

3. Closing the Loan⁵³

- Upon approval of a loan request, SBA will send the applicant loan closing documents describing all loan terms and conditions. If additional information to prepare loan documents is needed, SBA will let an applicant know. Examples of additional items SBA may include copies of property deeds, copies of titles to vehicles, copies of leases, etc.
- SBA will provide written instructions for completing all loan documents.
- Once loan documents are returned, loan funds will be distributed to the applicant. With larger loans, SBA usually disburses loan funds in stages as the applicant makes the repairs. In such cases, the applicant must maintain receipts to document expenditures and submit periodic progress reports to obtain additional disbursements.
- After full disbursement of the SBA loan, SBA will send the applicant's file to a servicing office (SBA or other servicing organization) until it is paid in full. SBA may also sell the loan.

VI. APPEALING THE DENIAL OF YOUR LOAN APPLICATION

1. What happens if your loan application is denied?⁵⁴

- If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than size (not being a small business) has the right to present information to overcome the reason or reasons for the decline and to request reconsideration in writing.⁵⁵
- Any request for reconsideration must be received by the SBA office that declined the original application within six months of the date of the declined notice. After six months, a new loan application is required.
- A request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for

⁵³ See http://www.sba.gov/disaster_recov/loaninfo/dloanassit.html.

⁵⁴ 13 CFR 123.13.

⁵⁵ Any decline due to size can only be appealed as set forth in part 13 CFR § 121.

reconsideration of a business loan application must also be accompanied by current business financial statements.

2. What happens if your loan application is denied a second time?⁵⁶

- If SBA declines your application a second time, you have the right to appeal in writing to the Area Director's Office. All appeals must be received by the office that declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must give specific reasons why the decline action should be reversed.

- The decision of the Area Director is final unless:
 - 1) The Area Director does not have authority to approve the requested loan;
 - 2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or
 - 3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration.

⁵⁶ 13 CFR 123.13.