

counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntington, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York;

(ix) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell; and

(x) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

(2) The term *very small business* or *VSB* means a concern whose headquarters is located within the geographic area served by a designated SBA district and, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million. The terms *concerns*, *affiliates*, *average annual receipts*, and *employees* have the meaning given to them in §§ 121.105, 121.103, 121.104, and 121.106, respectively, of this chapter.

(c)(1) A contracting officer must set aside for VSB concerns each procurement that has an anticipated dollar value between \$2,500 and \$50,000 if:

(i) In the case of a procurement for manufactured or supply items:

(A) The buying activity is located within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery; or

(ii) In the case of a procurement for other than manufactured or supply items:

(A) The requirement will be performed within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery.

(2) The geographic areas served by the SBA Los Angeles and Santa Ana District Offices will be treated as one designated SBA district for the purposes of this section.

(3) If the contracting officer determines that there is not a reasonable

expectation of receiving at least two responsible offers from VSB concerns headquartered within the geographic area served by the applicable designated SBA district, he or she must include in the contract file the reason(s) for this determination, and solicit the procurement pursuant to the provisions of 48 CFR 19.502-2. SBA may appeal such determination using the same procedure described in 48 CFR 19.505.

(4) If the contracting officer receives only one acceptable offer from a responsible VSB concern in response to a VSB set-aside, the contracting officer will make an award to that firm. If the contracting officer receives no acceptable offers from responsible VSB concerns, he or she will withdraw the procurement and, if still valid, must resolicit it pursuant to the provisions of 48 CFR 19.502-2.

(d) Where a procurement is set aside for VSB concerns, only those VSB concerns whose headquarters are located within the geographic area served by the applicable designated SBA district are eligible to submit offers in response to the solicitation.

(e) Nothing in this section shall be construed to alter in any way the procedures by which procuring activities award contracts under the SBA's 8(a) Business Development program (see 13 CFR part 124).

(f) This pilot program terminates on September 30, 2000. Any award under this program must be made on or before this date.

Dated: July 28, 1998.

Aida Alvarez,
Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Under this final rule SBA amends its regulations to conform the eligibility criteria for disaster loans to those applicable in SBA's business loan program. Under the final rule, a business can not obtain a physical disaster loan if it is engaged in any illegal activity; if it is a government owned entity (other than one owned or controlled by a Native American tribe); or if it engages in products or services of a prurient sexual nature. Under the final rule, a business is not eligible for an economic injury disaster loan if more

than one-third of its revenues are from legal gambling operations or from packaging SBA loans; if it is principally engaged in teaching or indoctrinating religion; or is primarily engaged in political or lobbying activities.

DATES: This rule is effective September 2, 1998.

FOR FURTHER INFORMATION CONTACT:

Bernard Kulik, 202-205-6734.

SUPPLEMENTARY INFORMATION: On April 23, 1998, SBA published a notice of proposed rulemaking (63 FR 20140) to amend section 123.201 of its regulations so that an applicant would not be eligible for a physical disaster business loan if it is engaged in any illegal activity; if it is a government owned entity (other than a business owned or controlled by a Native American tribe); or if the business (1) presents live performances of a prurient sexual nature, or (2) derives directly or indirectly more than *de minimis* gross revenue from activities of a prurient sexual nature. The proposed rule was intended to codify SBA's existing policy of using the same ineligibility criteria for SBA's disaster and business loan programs. Thus, a business that would not be eligible to receive an SBA guaranteed business loan because it met these criteria, would also not be eligible to obtain a physical disaster loan.

SBA also proposed to amend section 123.301 of its regulations so that a business would not be eligible for an economic injury disaster loan if it: (1) derived more than one-third of its gross annual revenue from legal gambling activities; (2) earned more than one-third of its gross annual revenue from packaging SBA loans; (3) was principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or (4) primarily engaged in political or lobbying activities. These proposed changes were intended to codify SBA's existing policy of using the same ineligibility criteria for its economic injury disaster and business loan program. Thus, if a business is not eligible, because of these criteria, for an SBA guaranteed loan under the business loan program, it would not be eligible for an economic injury disaster loan.

SBA received one comment. The commenter was concerned that if the proposed economic injury amendments were finalized, SBA would not be able to assist non-profit entities which provide community services and derive more than one third of their revenue from legal gambling activities. Under SBA's rules, non-profit entities presently do not qualify for economic

injury loans, so the proposed amendment would not change their eligibility. Accordingly, the final rule is identical to the proposed rule.

In this final rule, SBA also corrects a typographical error in section 123.202(a) by substituting "lesser" for "greater" in the first sentence which now reads: "Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or \$1.5 million." This ensures that an applicant receives disaster assistance for an uncompensated loss or injury without obtaining excessive SBA assistance at lower than market rates.

Compliance with Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch 35)

SBA certifies that this final rule does not constitute a significant rule within the meaning of Executive Order 12866 and does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. *et seq.* It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. This final rule codifies current SBA practices and will not affect additional businesses or impose any costs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012 and 59.008)

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 123,

chapter I, title 13, Code of Federal Regulations, as follows:

PART 123—DISASTER LOAN ASSISTANCE

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739.

2. Add new paragraphs (d), (e), and (f) to § 123.201 to read as follows:

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

* * * * *

(d) You are not eligible if your business is engaged in any illegal activity.

(e) You are not eligible if you are a government owned entity (except for a business owned or controlled by a Native American tribe).

(f) You are not eligible if your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

§ 123.202 [Amended]

3. Amend § 123.202(a) by removing the word "greater" and adding, in its place, the word "lesser" in the first sentence.

4. Amend § 123.301 as follows:

a. Remove "gambling" and "loan packaging" in paragraph (a);

b. Remove "or" at the end of paragraph (c);

(c) Remove the period and insert "or" at the end of paragraph (d); and

(d) Add new paragraphs (e), (f), (g), and (h) to read as follows:

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

* * * * *

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

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

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

(h) Primarily engaged in political or lobbying activities.

Dated: July 20, 1998.

Aida Alvarez,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) adopts as a final rule, without change, the provisions of an interim final rule amending its disaster loan rules. This final rule continues to ensure that when a legal business entity is engaged in both agricultural enterprises and non-agricultural business ventures, SBA can provide physical disaster business loans to the non-agricultural portion which has been damaged by floods and other catastrophes.

DATES: This rule is effective September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Section 2(e) of the Small Business Act (15 USC S 631(e)) ("Act") states that the policy of the Congress is that the Government aid and assist "victims" of floods and other catastrophes. Section 2(g) of the Act provides that in its administration of the disaster loan program, pursuant to section 7(b) of the Act, SBA shall provide, "to the maximum extent possible," assistance and counseling to disaster "victims." In administering the disaster loan program, SBA is precluded, by section 7(b) of the Act, from assisting agricultural enterprises. As defined in section 18(b)(1) of the Act, an "agricultural enterprise" is a business engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

SBA previously provided physical disaster business loan assistance only to business entities which were adversely affected by floods and other catastrophes when the primary activity of the business entity was non-agricultural. Thus, if a person or a single business entity operated both