



Billing Code: 8026-03

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245-AH12

Regulatory Reform Initiative: Disaster Loan Program

AGENCY: U. S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is removing from the Code of Federal Regulations (CFR) 20 regulations that are no longer necessary because the programs they govern are no longer in effect. The rule will remove all regulations applicable to two subparts: Pre-Disaster Mitigation Loans and Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks. The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR.

DATES: This rule is effective on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: You may submit comments, identified by RIN: 3245-AH12 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or Hand Delivery/Courier: Jerome Edwards, Director, Program Policy and Evaluation, Office of Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI), as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Jerome Edwards, Director, Program Policy and Evaluation, Office of Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to jerome.edwards@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Jerome Edwards, Director, Program Policy and Evaluation, (202) 205-6734, jerome.edwards@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Pre-Disaster Mitigation Loans, Part 123, Subpart E

Pre-disaster mitigation loans were authorized by Congress in 1999 to encourage disaster preparedness rather than reliance on response and recovery. The program was authorized for five fiscal years (2000-2004). During that time, SBA made four loans under the program. SBA published regulations implementing the Pre-Disaster Mitigation Loan program on October 7, 2002 (67 FR 62337). SBA is now removing those regulations as the program is no longer authorized.

B. Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks, Part 123, Subpart G

In response to the September 11, 2001, terrorist attacks, SBA published regulations authorizing economic injury disaster loans outside the declared disaster areas to small businesses that suffered economic injury as a direct result of the attacks or any related Federal action following the attacks. The rule, published on October 22, 2001 (66 FR 53331), outlined the eligibility criteria and loan terms. On June 24, 2002, SBA extended the deadline for businesses to apply for the loans from May 22, 2002 to September 30, 2002 (67 FR 42594). SBA made 4,996 loans under the program. SBA is now removing these regulations as they are now obsolete.

C. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

D. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777,

agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

II. Section by Section Analysis

A. Pre-Disaster Mitigation Loans, Part 123, Subpart E

SBA is removing subpart E from part 123 of SBA's regulations because the regulations are no longer necessary. The regulations at 13 CFR 123.400 through 123.412 describe eligibility requirements, allowable uses of proceeds, loan terms, and application procedures for Pre-Disaster Mitigation Loans. Specifically, the provisions to be removed are: (1) § 123.400 What is the Pre-Disaster Mitigation Loan Program?; (2) § 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?; (3) § 123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?; (4) § 123.403 When is your business eligible to apply for a pre-disaster mitigation loan?; (5) § 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?; (6) § 123.405 How much can your business borrow with a pre-disaster mitigation loan?; (7) § 123.406 What is the interest rate on a pre-disaster mitigation loan?; (8) § 123.407 When

does your business apply for a pre-disaster mitigation loan and where does your business get an application?; (9) § 123.408 How does your business apply for a pre-disaster mitigation loan?; (10) § 123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?; (11) § 123.410 Which loan requests will SBA fund?; (12) § 123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?; and (13) § 123.412 What happens if SBA declines your business' pre-disaster mitigation loan request?

The statutory authority for Pre-Disaster Mitigation Loans expired in 2004; therefore, SBA is no longer making these loans. There are no outstanding loans.

B. Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks, Part 123, Subpart G

SBA is also removing subpart G from part 123 of SBA's regulations because the regulations are no longer necessary. The regulations at 13 CFR 123.600 through 123.606 describe eligibility requirements, allowable uses of proceeds, loan terms, and application procedures for economic injury disaster loans made under Subpart G. Specifically, the provisions to be removed are: (1) § 123.600 Are economic injury disaster loans under this subpart limited to the geographic areas contiguous to the declared disaster areas?; (2) § 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?; (3) § 123.602 When would my business not be eligible to apply for an economic injury disaster loan under this subpart?; (4) § 123.603 What is the interest rate on an economic injury disaster loan under this subpart?; (5) § 123.604 How can my business spend my economic injury disaster loan under this subpart?; (6) § 123.605 How

long do I have to apply for a loan under this subpart?; and (7) § 123.606 May I request an increase in the amount of an economic injury disaster loan under this subpart?

This loan program was intended to specifically address the unique injury caused by the September 11, 2001 terrorist attacks. Since the deadline for businesses to apply for the loans was September 30, 2002 (67 FR 42594), SBA is no longer making these loans. Therefore, the regulations are no longer necessary. There are approximately 478 outstanding loans; existing borrowers can refer to their loan documents for information on loan terms.

C. Conforming Amendment

SBA is removing regulatory text that cross-references the regulations being removed by this rule. Specifically, this conforming change removes the text in § 123.21 that references pre-disaster mitigation loans.

D. Administrative Procedure Act - Direct Final Rule

SBA is publishing this rule as a direct final rule because SBA views this action as a non-controversial administrative action that relates solely to expired SBA programs. This rule will be effective on the date shown in the DATES section unless SBA receives any significant adverse comments on or before the deadline for comments set forth in the DATES section. Significant adverse comments are comments that SBA determines provide strong justifications for why the rule should not be adopted or for changing the rule. If SBA receives any significant adverse comments, SBA will publish a document in the *Federal Register* withdrawing this rule before the effective date.

III. Compliance with Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

B. Executive Order 13771

This direct final rule is an Executive Order 13771 deregulatory action with an annualized net savings of \$45,245 and a net present value of \$646,355, both in 2016 dollars. This rule will remove information, which will save potential applicants time in reading and inquiring about these obsolete programs and reduce confusion around whether applications are being accepted.

Approximately 109,131 applicants apply for SBA disaster assistance loans per year on average, based on data from 2014-2018. These calculations assume 3% of disaster loan applicants read the regulations per year (or approximately 3,300 applicants) and that the removal of these obsolete regulations would save each applicant 30 minutes of time otherwise spent reviewing or inquiring about non-existent programs. This time is valued at \$28.80 per hour—the median wage of a full-time working adult based on 2018 Bureau of Labor Statistics (BLS) data, adding 30% more for benefits. The removal of these regulations produces a total savings per year of \$47,145 in current dollars.

C. Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this final rule does not affect any existing collection of information.

F. Regulatory Flexibility Act

When an agency issues a rule, the Regulatory Flexibility Act (RFA) requires the agency to prepare a final regulatory flexibility analysis (FRFA), which describes whether the rule will have a significant economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a FRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This direct final rule is removing descriptions of obsolete programs in the current regulations, which will reduce confusion and the time required to read and/or inquire about obsolete programs. Approximately 109,131 applicants apply for SBA disaster assistance loans per year, on average based on data from 2014-2018. The net savings to

potential disaster loan applicants is \$47,145 per year in current dollars, or less than a dollar per applicant.

Therefore, SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses, Terrorism.

Accordingly, for the reasons stated in the preamble, SBA is amending 13 CFR part 123 as follows:

PART 123 – DISASTER LOAN PROGRAM

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), and 657n.

§123.21 [Amended]

2. Amend §123.21 by removing the last sentence.

Subpart E [Removed and Reserved]

3. Remove and reserve subpart E, consisting of §§ 123.400 through 123.412.

Subpart G [Removed and Reserved]

4. Remove and reserve subpart G, consisting of §§ 123.600 through 123.606.

Dated: February 11, 2020.

Jovita Carranza,

Administrator.

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