



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

[Docket Number SBA-2021-0016]

RIN 3245- AH80

Disaster Loan Program Changes

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes to the Disaster Loan Program regulations. For applications for COVID-19 Economic Injury Disaster (COVID EIDL) loans, in this rule SBA is changing the definition of affiliation, the eligible uses of loan proceeds, and application of the size standard to certain hard-hit eligible entities, and is establishing a maximum loan limit for borrowers in a single corporate group. In addition, for all disaster assistance programs, in this rule, SBA is changing which SBA official may make the decision on the appeal of an application that has been declined for a second time.

DATES: *Effective date:* The provisions of this interim final rule are effective September 8, 2021.

Applicability dates: The change to the regulation at 13 CFR 123.13 applies to applications submitted under all of SBA's Disaster Loan Programs on or after September 8, 2021. The changes to the regulation at 13 CFR 123.303 apply to COVID EIDL loan proceeds available on or after September 8, 2021, without regard to the date such proceeds were received from SBA. The other changes in this interim final rule apply to applications submitted under the COVID EIDL Program on or after September 8, 2021, through December 31, 2021, or until funds available for this purpose are exhausted, whichever is earlier. Additionally, with the exception of the regulation at

123.304, this interim final rule applies to original applications under the COVID EIDL Program that are submitted before but approved on or after September 8, 2021.

Comment date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by number SBA-2021-0016 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to COVIDEIDLHelp@sba.gov. All other comments must be submitted through the Federal eRulemaking Portal described above. 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 whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: An SBA Disaster Customer Service Representative at (800) 659-2955 (individuals who are deaf or hard of hearing may call (800) 877-8339), or a local SBA Field Office; the list of SBA field offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 7(b)(2) of the Small Business Act authorizes SBA to make EIDL loans to eligible small businesses and nonprofit organizations located in a disaster area. 15 U.S.C. 636(b)(2). On March 6, 2020, Congress deemed COVID-19 to be a disaster in Title II of the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020, Pub. L. 116-123, 134 Stat. 146, 147, allowing SBA to declare disasters and make EIDL loans available to small businesses and nonprofit organizations suffering substantial

economic injury as a result of the COVID-19 pandemic. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Pub. L. 116-136, expanded eligibility and waived certain rules and requirements for COVID EIDL loans. Section 1110 of the CARES Act permitted SBA to waive rules related to personal guaranties on COVID EIDL loans of not more than \$200,000 and the requirement that an applicant be unable to obtain credit elsewhere. Section 1110 also provided SBA with the authority to approve an applicant based solely on the credit score of the applicant or use alternative appropriate methods to determine an applicant's ability to repay. On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (PPP Enhancement Act) Pub. L. 116-139, provided additional funding for SBA to make EIDL loans and further expanded EIDL eligibility to include agricultural enterprises with not more than 500 employees, which are typically not eligible for SBA disaster assistance. Prior to the enactment of the PPP Enhancement Act, SBA had an existing \$1.1 billion in credit subsidy funding, which it used to support between \$7 billion and \$8 billion in EIDL loans to businesses affected by the COVID-19 pandemic. The PPP Enhancement Act provided an additional \$50 billion in loan credit subsidy to SBA. *See* 15 U.S.C. 636(b) and 13 CFR 123.300(c). On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Pub. L. 116-260, was enacted as part of the Consolidated Appropriations Act, 2021. Section 332 of the Economic Aid Act extended the authority to make COVID EIDL loans through December 31, 2021, and further modified the terms under which SBA approves COVID EIDL loans, and Section 331 provided SBA authority to make targeted EIDL advances. On March 11, 2021, the American Rescue Plan Act (ARPA), Pub. L. 117-2, was enacted, establishing the Restaurant Revitalization Fund (RRF) through Section 5003 to provide assistance to restaurants, beverage alcohol producers, and other entities, and providing authority to provide supplemental Targeted Advances.

In light of the COVID-19 emergency, many small businesses nationwide have experienced economic hardship as a direct result of the Federal, State, and local public health measures that have been taken to minimize the public's exposure to the virus. These measures, some of which were government-mandated, were implemented across the country. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or stay-at-home orders, were implemented, resulting in a dramatic decrease in economic activity as the public avoided malls, retail stores, and other businesses. On March 16, 2021, the SBA announced that it would extend deferment periods for all disaster loans, including COVID EIDL loans, until 2022. COVID EIDL loans made in calendar year 2020 will have the first payment due date extended from 12 months to 24 months from the date of the note. COVID EIDL loans made in calendar year 2021 will have the first payment due date extended from 12 months to 18 months from the date of the note. On March 24, 2021, the SBA announced that it would increase the maximum amount that can be borrowed under the COVID EIDL program from \$150,000 (6 months of economic injury) to \$500,000 (24 months of economic injury).

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment. SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be "impracticable" and "contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

The intent of the statutory COVID financial assistance programs, including the COVID EIDL program, is that SBA provide relief to America's small businesses expeditiously. This intent, along with the continuing decrease in economic activity in key economic sectors as compared to 2019 and the reimposition of mask requirements and other public-health measures throughout the country because of the variants (including

Delta) of COVID-19, provides good cause for SBA to dispense with advance notice and comment rulemaking, which would take months. Given that this rule is issuing in August, new changes could not go into effect until November, leaving just a few weeks to implement the new program and take applications before funding expires. This shortened program timeframe would be problematic because SBA believes, with basis, there is a tremendous demand and need for this program. Other SBA COVID relief programs have recently ended or have exhausted their funding (including the Paycheck Protection Program and the Restaurant Revitalization Fund), yet businesses and nonprofit organizations are still in need of support. As evidence of unmet need, the Restaurant Revitalization Fund received \$28.6 billion in appropriations to provide assistance to the restaurant industry, but within 21 days, SBA received 278,304 applications seeking assistance in amounts totaling more than \$72 billion, nearly three times the amount appropriated. Funding was quickly exhausted, leaving 177,300 businesses without assistance. Further, with the end of the Paycheck Protection Program, businesses and nonprofit organizations that are still struggling will turn to the COVID EIDL program for long-term recovery. Thus, the COVID EIDL program is more critical now than it was before, because of the lack of resources available through these other programs and because of the continuing economic instability. Issuing this rule without advance notice and comment will give small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors affected by this interim final rule the maximum amount of time to apply for COVID EIDL loans, and will give SBA the maximum amount of time to process applications before the program ends in less than five months-- on December 31, 2021. In addition, 13 CFR 123.1 reserves to SBA authority to revise disaster regulations without advance notice, by publishing interim emergency regulations in the *Federal Register*.

Finally, given the short duration of this program and the unmet need for immediate assistance in key economic sectors, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date. 5 U.S.C. 553(d).

Limiting the availability of this program to a few weeks, given the needs, would result in significant avoidable economic losses – precisely the result that Congress was trying to avoid in passing and amending the COVID EIDL program. Therefore, SBA is of the view that delaying issuance to conduct notice and comment procedures would effectively void the effectiveness of these reforms to the COVID EIDL program, with significant harms resulting. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Disaster Loan Program Changes

1. Definition of Affiliation for COVID EIDL Loans

Based on continuing confusion and burdensome analyses required by applicants and SBA, to simplify the program requirements of COVID EIDL such that applicants can more easily complete the affiliation analysis and to expand the number of entities that will be eligible for COVID EIDL loans, SBA will align the definition of affiliation for COVID EIDL with the definition of “affiliated business” set forth in section 5003 of the ARPA for the Restaurant Revitalization Fund (RRF). Like the RRF program, COVID EIDL is a program where an applicant applies directly to SBA, without an intermediary lender to explain program rules and ensure compliance. In SBA’s regular Business Loan Programs, the applicant relies on the lender intermediary to correctly interpret and apply the affiliation rules at 13 CFR 121.301, which require an applicant to consider affiliation based on ownership, stock options, convertible securities, agreements to merge, management, identity of interest, and franchise and license agreements. Congress

mandated more simple affiliation rules in ARPA for RRF. Given the lack of intermediaries in the COVID EIDL program, SBA has determined that it is appropriate to use the same affiliation rules that Congress mandated for RRF.

Therefore, SBA is revising 13 CFR 121.301, “What size standards and affiliation principles are applicable to financial assistance programs?”, to add a new paragraph (g) to state that for COVID EIDL loans, an affiliated business or affiliate is “a business in which an eligible entity has an equity interest or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such affiliation shall be determined as of any arrangements or agreements in existence as of January 31, 2020.” The new paragraph (g) also will include a cross reference to the exceptions to affiliation set forth in 13 CFR 121.103(b), which continue to apply to COVID EIDL loans.

In addition to simplifying the program requirements for COVID EIDL loans, this change will streamline the application process for SBA and facilitate the review of such applications prior to the deadline of December 31, 2021. This streamlining will expand the flow of funds to businesses and nonprofit organizations that still need relief from the COVID-19 pandemic.

2. Second Decline of Loan Application

The regulation at 13 CFR 123.13, “What happens if my loan application is denied?”, requires that applicants appeal a second decline of a loan application directly to the Director, Disaster Assistance Processing and Disbursement Center (DAPDC). To enable timely consideration of appeals, SBA is changing the appeals process to allow the Director, DAPDC, or the Director’s designee(s), to make the decision on appeals for all Disaster Loan Program loans. In addition, SBA is revising the regulation to clarify that the Administrator, solely within the Administrator’s discretion, has the authority to review the matter and make the final decision.

Therefore, SBA is revising the regulation at 13 CFR 123.13, paragraphs (e) and (f), to state that, if SBA declines an application a second time, the Director, DAPDC, or the Director's designee(s), will make the decision. Further, SBA is revising the regulation to state that the Administrator, solely within the Administrator's discretion, may choose to review the matter and make the final decision. Such discretionary authority of the Administrator does not create additional rights of appeal on the part of an applicant not otherwise specified in SBA regulations. The changes to this regulation apply to all SBA Disaster Loan Programs.

3. Eligible Entities for COVID EIDL Loans

The Administrator has determined that, due to the extended duration and scope of the COVID-19 pandemic, as well as due to mandatory Federal, state, and local shut down and social distancing orders, businesses in certain sectors of the North American Industry Classification System (NAICS) continue to suffer from significant economic hardship. Specifically, the NAICS sectors and subsectors identified in Section 1112 of the CARES Act, as amended by section 325 of the Economic Aid Act, continue to need substantial help. These include Sector 61, Educational Services; Sector 71, Arts, Entertainment and Recreation; Sector 72, Accommodation and Food Services; Subsector 213, Support Activities for Mining; Subsector 315, Apparel Manufacturing; Subsector 448, Clothing and Clothing Accessories Stores; Subsector 451, Sporting Good, Hobby, Book, and Music Stores; Subsector 481, Air Transportation; Subsector 485, Transit and Ground Passenger Transportation; Subsector 487, Scenic and Sightseeing Transportation; Subsector 511, Publishing Industries (except Internet); Subsector 512, Motion Picture and Sound Recording Industries; Subsector 515, Broadcasting (except Internet); Subsector 532, Rental and Leasing Services; and Subsector 812, Personal and Laundry Services.

Additionally, certain industries were identified in Section 5003(a)(4) of the ARPA for additional assistance but may not have received funding due to program deadlines or

the exhaustion of funds. As stated previously, the Restaurant Revitalization Fund (RRF) was unable to provide help to all eligible applicants due to a lack of funding, and many small businesses in that industry continue to suffer economic hardships caused by the pandemic. Most businesses eligible for RRF are in NAICS sector 72, Accommodation and Food Services; however, beverage manufacturers in NAICS Industry Group 3121, such as breweries, wineries, and distilleries were also eligible for RRF funding. Based on publicly available industry research and input from industry trade groups, SBA believes these beverage manufacturers continue to require additional help.

Under Section 1110 of the CARES Act, COVID EIDL loans are available to “small business concerns, private nonprofit organizations, and small agricultural cooperatives,” as defined in SBA’s size standards in 13 CFR 121.201, or businesses that have 500 or fewer employees. To provide assistance to a greater number of businesses in the hard-hit industries described above, SBA is defining “small business concern” for purposes of the COVID EIDL program to extend eligibility to businesses in those industries that have 500 or fewer employees *per physical location*. SBA is revising 13 CFR 123.300, “Is my business eligible to apply for an economic injury disaster loan?”, by adding a new paragraph (e) to state that certain hard-hit businesses identified by specific NAICS classifications will be able to qualify as eligible small business concerns for COVID EIDL loans based on the number of employees per physical location. Consistent with the standard in RRF, businesses using the per-physical location eligibility standard must, together with affiliates, have no more than 20 locations.

This rule merely provides an added basis of eligibility for COVID EIDL assistance. It does not make any entity that is eligible for COVID EIDL assistance on another basis ineligible for such assistance. For example, a business that has more than 20 business locations, but has fewer than 500 employees in the aggregate of all of its business locations is currently eligible for COVID EIDL loans because it meets the 500-

employee size standard. Although this rule allows a business concern to be eligible for COVID EIDL assistance if it employs not more than 500 employees per physical location as long as it (together with its affiliates) has no more than 20 locations, that provision does not change the current eligibility of a business concern that meets the general 500-employee size standard. For example, a business with 25 locations and 15 employees per location would not be ineligible, because the total number of employees is 375.

This rule also does not change the applicable size standards. The size standard itself remains at 500 employees (together with affiliates), as authorized by Section 1110(a)(2) of the CARES Act, or the size standard established in 13 CFR 121.201. Instead, the rule changes how the agency defines the term “business concern” for purposes of COVID EIDL assistance. The Small Business Act provides SBA with broad authority to define a “small business concern.” 15 U.S.C. 632(a)(2). By regulation, SBA generally defines a concern to be a business entity, although there are exceptions. 13 CFR 121.105. SBA applies its size standards to determine whether a concern is a small business eligible for SBA assistance, and, because of the general definition, the size standards generally apply at the entity level. In this interim final rule, based on how SBA applied the PPP’s size standard at the per-physical location level for NAICS sector-72 businesses and other industries, SBA is adopting a program-specific definition of “business concern” as covering each individual physical location for industries in certain hard-hit economic sectors. As such, SBA will apply the program’s size standards at the physical-location level for the identified industries. This does not change the size standards that apply to the COVID EIDL loan program. Instead, this program-specific provision changes the level at which the size standard applies – for businesses in certain sectors- i.e., to each physical location, rather than to each entity in the aggregate.

4. COVID EIDL Uses of Proceeds

Currently, the EIDL program only permits loan proceeds to be used for working capital necessary to carry the business until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury and does not permit payments on Federal debt or prepayment of non-Federal existing debt even if the debt has a balloon payment due. Prior to the pandemic, businesses, in the ordinary course of their operations, managed debt payments through cash flows of the business. Due to mandatory COVID-19 closures, some businesses did not have sufficient cash flow to service debt obligations. Despite several short-term emergency programs in the CARES Act and other statutes, many small businesses have not been able to return to normal operations, and now struggle with deferred debt, past due payments, and insufficient cash flow. With the expectation that the pandemic would not last for the duration that it has, many businesses took on short-term debt, often with unfavorable repayment terms, or negotiated deferments in debt payments in order to avoid default. In order to maximize relief from the debt burden businesses and nonprofit organizations have accrued, SBA is expanding COVID EIDL eligible uses of proceeds to include payments on all forms of business debt, including loans owned by a Federal agency (including SBA) or a Small Business Investment Company (SBIC) licensed under the Small Business Investment Act. COVID EIDL loan proceeds may be used to make debt payments including monthly payments, deferred interest, and pre-payment of business debt, except that pre-payments will not be permitted on any debt owned by a Federal agency (including SBA) or an SBIC. COVID EIDL loan proceeds may be used to pay debt incurred both before and after submitting the COVID EIDL loan application.

Therefore, SBA is revising the regulation at 13 CFR 123.303, “How can my business spend my economic injury disaster loan?”, to permit COVID EIDL working capital loan proceeds to be used to pay any type of business debt, including loans owned by a Federal agency (including SBA) or an SBIC. SBA also is revising the regulation to

clarify that COVID EIDL loan proceeds may be used to make debt payments including monthly payments, payments of deferred interest, and pre-payments, except that pre-payments will not be permitted on debt that is owned by a Federal agency (including SBA) or an SBIC.

5. Limits of COVID EIDL Loans to a Single Corporate Group

SBA is adding a new regulation to state that entities that are part of a single corporate group shall in no event receive more than \$10,000,000 of COVID EIDL loans in the aggregate. For purposes of this limit, entities are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent. Businesses are subject to this limitation even if the businesses are in certain hard-hit sectors and able to use the per-physical location application of the size standard as set forth in 13 CFR 123.300(e)(5).

Given the changes in the COVID EIDL maximum loan amount, eligibility, and increased outreach to industries that have been particularly hard hit by the pandemic (for example, restaurants, hotels, gyms, travel and tourism), SBA expects an increase in the number of applications submitted and average loan size. The Administrator determined that limiting the amount of COVID EIDL loans that a single corporate group may receive will promote the availability of COVID EIDL loans to the largest possible number of borrowers. The Administrator has concluded that a limitation of \$10,000,000 strikes an appropriate balance between broad availability of COVID EIDL loans and program resource constraints. SBA's affiliation rules, which relate to an applicant's eligibility for COVID EIDL loans, continue to apply independent of this limitation.

6. Additional Information

SBA may provide further information through guidance that will be posted on SBA's website at www.sba.gov, if needed. Questions may be directed to an SBA Disaster Customer Service Representative at 1-800-659-2955 (individuals who are deaf or hard of

hearing may call 1-800-877-8339), or a local SBA Field Office; the list of local SBA Field Offices may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>. Compliance with Executive Orders, the Congressional Review Act, Paperwork Reduction Act, and the Regulatory Flexibility Act.

Executive Orders 12866 and 13563

OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current economic hardships and conditions arising from the COVID-19 emergency.

This rule is necessary to provide economic relief to small businesses and private nonprofit organizations nationwide adversely impacted by COVID-19. As evidence of unmet need, the Restaurant Revitalization Fund (RRF) received \$28.6 billion in appropriations and in 21 days, received 278,304 RRF applications totaling more than \$72 billion, which resulted in 177,300 businesses without assistance. Further, with the end of the Paycheck Protection Program (PPP), businesses and nonprofit organizations that are still struggling will turn to the COVID EIDL program for long-term recovery. For these reasons, SBA anticipates that this rule will result in substantial benefits to small businesses, nonprofit organizations, their employees, and the communities they serve.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Congressional Review Act

OIRA has determined that this is a major rule for purposes of subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 804(2) et seq. Under the CRA, a major rule takes effect 60 days after the rule is published in the *Federal Register*. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be “impracticable, unnecessary, or contrary to the public interest,” and provides that the rule shall take effect at such time as the Federal agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), SBA for good cause finds that a 60-day delay to provide public notice would be impracticable, unnecessary, and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

Other SBA COVID-19 relief programs have recently ended or exhausted the funding provided for the program (including PPP and RRF), yet businesses and nonprofit organizations are still in need of support. The COVID EIDL program is more critical now than it was before because of the lack of these other resources and the continuing economic instability. An immediate effective date will give small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors affected by

this interim final rule the maximum amount of time to apply for loans and SBA the maximum amount of time to process applications before the program ends on December 31, 2021. Given the short duration of this program, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require revisions to the COVID-19 Economic Injury Disaster Loan Application information collection (OMB Control Number 3245-0406). The application form will be revised to require the disclosure of the NAICS code for the applicant in order to determine the size of the applicant on a per-physical location basis and to add an option to identify the eligible entity as a business that is assigned a NAICS code beginning with 61, 71, 72, 213, 3121, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812, employs not more than 500 employees per physical location, and together with affiliates has no more than 20 locations. In addition, to simplify and streamline the process for applicants, SBA has consolidated Forms 3501 (COVID-19 Economic Injury Disaster Loan Application), 3502 (Economic Injury Disaster Loan Supporting Information), and 3503 (Self-Certification for Verification of Eligible Entity for Economic Injury Disaster Loan) into one form. This will reduce the burden on applicants as they will only need to enter certain information once. SBA also added questions related to entity type and types of business activity to assist borrowers in making the eligibility certification. Further, SBA revised the questions related to the calculation of economic injury for clarity and to aid in automating the review process. Finally, SBA made additional technical edits to the form for clarity. SBA has obtained emergency approval of the revisions, including waiver of public comment notices. The collection is approved for use until February 28, 2022. SBA will take the necessary steps to solicit comments and revise the information collection, if necessary, before approval expires.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, such as when, among other exceptions, the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How To Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects

13 CFR Part 121

Loan programs – business, Reporting and recordkeeping requirements, Small business.

13 CFR Part 123

Loan Program – disaster loan program.

For the reasons stated in the preamble, SBA amends 13 CFR parts 121 and 123 as follows:

PART 121 – SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116-136, Section 1114.

2. Amend § 121.301 by adding paragraph (g) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(g) For COVID-19 Economic Injury Disaster (COVID EIDL) loans, an “affiliated business” or “affiliate” is a business in which an eligible entity has an equity interest or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such affiliation shall be determined as of any arrangements or agreements in existence as of January 31, 2020. For exceptions to affiliation, see § 121.103(b).

PART 123—DISASTER LOAN PROGRAM

3. The authority citation for 13 CFR part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), and 657n; Section 1110, Pub. L. 116-136, 134 Stat. 281; and Section 331, Pub. L. 116-260, 134 Stat. 1182.

4. Amend § 123.13 by revising the first sentence of paragraph (e) and paragraph (f) to read as follows:

§123.13 What happens if my loan application is denied?

* * * * *

(e) If SBA declines your application a second time, you have the right to appeal in writing to the Director, Disaster Assistance Processing and Disbursement Center (DAPDC) or the Director’s designee(s). * * *

(f) The decision of the Director, DAPDC or the Director’s designee(s), is final unless:

(1) The Director, DAPDC or the Director’s designee(s), does not have the authority to approve the requested loan;

(2) The Director, DAPDC or the Director’s designee(s), refers the matter to the SBA Associate Administrator for Disaster Assistance (AA/DA);

(3) The AA/DA, upon a showing of special circumstances, requests that the Director, DAPDC or the Director's designee(s), forward the matter to him or her for final consideration; or

(4) The SBA Administrator, solely within the Administrator's discretion, chooses to review the matter and make the final decision. Such discretionary authority of the Administrator does not create additional rights of appeal on the part of an applicant not otherwise specified in SBA regulations.

* * * * *

5. Amend § 123.300 by adding paragraph (e) to read as follows:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(e) COVID-19 Economic Injury Disaster (COVID EIDL) loans are available if, as of the date of application, you:

(1) Are a business, including an agricultural cooperative, aquaculture enterprise, nursery, or producer cooperative (but excluding all other agricultural enterprises), that is small under SBA Size Standards (as defined in part 121 of this chapter);

(2) Are an individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;

(3) Are a private non-profit organization that is a non-governmental agency or entity that currently has an effective ruling letter from the Internal Revenue Service (IRS) granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue-producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization;

(4) Are a business, cooperative, agricultural enterprise, Employee Stock Ownership Plan (as defined in 15 U.S.C. 632), or tribal small business concern (as described in 15 U.S.C. 657a(b)(2)(C)), with not more than 500 employees; or

(5) Are a business that is assigned a North American Industry Classification System (NAICS) code beginning with 61, 71, 72, 213, 3121, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812, employs not more than 500 employees per physical location, and together with affiliates has no more than 20 locations.

6. Amend § 123.303 by adding a sentence to the end of paragraph (a) and revising paragraph (b)(2) to read as follows:

§ 123.303 How can my business spend my economic injury disaster loan?

(a) * * * COVID EIDL loan proceeds also may be used to make debt payments including monthly payments, payment of deferred interest, and pre-payments on any business debts, except pre-payments are not permitted on any loans owned by a Federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act.

(b) * * *

(2) Except for COVID EIDL loan proceeds, make payments on loans owned by a Federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

* * * * *

7. Add § 123.304 to read as follows:

§ 123.304 Is there a limit on the maximum loan amount to a single corporate group for COVID EIDL Loans?

Entities that are part of a single corporate group shall in no event receive more than \$10,000,000 of COVID EIDL loans in the aggregate. For purposes of this limit,

entities are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2021-19232 Filed: 9/7/2021 8:45 am; Publication Date: 9/8/2021]