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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

#### RIN 3245-AI71

#### **Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Interim Final Rule with request for comments.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is issuing this interim final rule (IFR) to ensure the timely and effective delivery of assistance under the Disaster Loan Program authorized under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) (“Disaster Loan Program”) following a Presidentially declared disaster. This rule preempts certain state and local requirements impacting the repair, rehabilitation, or replacement of damaged or destroyed property and associated activities financed by the Disaster Loan Program when such requirements cause delay in the use of SBA Disaster Loan Program proceeds. The rule is necessary to reconcile non-federal requirements that undermine Congress’s objective of rapid housing and business recovery, public health and safety restoration, and economic stabilization after disasters.

#### **DATES:**

Effective Date: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability Date: This rule applies to disaster loans approved on or after January 1, 2025.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AI71, by any of the following methods:

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

- Mail (for paper submissions): Eric Wall, Office of Disaster Recovery and Resilience, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted 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 comments to Laura Maas and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

**FOR FURTHER INFORMATION CONTACT:** Eric Wall, Office of Disaster Recovery and Resilience, 409 3rd St. SW, Washington, DC 20416, (202) 205-6739.

**SUPPLEMENTARY INFORMATION:**

I. Background and Need for Rule

The disaster loan program authorized by section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is an important federal mechanism established to provide rapid financial assistance to homeowners, business owners, and other victims whose property is damaged or destroyed as a result of declared disasters. Congress intended the program to operate swiftly to mitigate the severe economic, housing, and public health consequences resulting in the wake of such disasters.

In administering the program, SBA has identified recurring delays to recovery caused by state and local permitting requirements or similar conditions precedent to construction. These requirements have materially delayed or prevented business owners, homeowners, and other victims of disasters from using federally approved loan proceeds, frustrating the core objectives of the Disaster Loan Program. Specifically, SBA has identified instances where existing victims of Presidential-declared disasters have suffered undue delays in their ability to use approved loan proceeds because local and state authorities are delaying approvals and permits necessary to

repair, rehabilitate, or replace their homes and businesses. Some of these victims have delayed disbursement of their SBA loans, while others who have received loan proceeds cannot use them and will soon begin accruing interest and payment obligations, adding insult to injury. Every day counts in recovering from a disaster, a fact Congress recognized in 2007 when it criticized SBA for failing to deliver relief to disaster victims within 30 days.<sup>1</sup>

This interim final rule establishes clear federal standards governing use of Disaster Loan Program proceeds when interacting with non-federal governmental authorities and preempts state and local permitting and approval requirements to the extent such requirements delay the use of Disaster Loan Program proceeds in contravention of Congressional objectives. The rule does not preempt any substantive state and local building requirements (e.g., building standards, health and safety requirements, inspections, or certificates of occupancy), but rather applies only where state or local permits or other approvals stand as obstacles to accomplishing the federal goal of rapid relief after a Presidentially declared disaster. Substantive state and local standards and requirements are preserved in that builders must certify that they have, and will, otherwise comply with all such substantive local and state standards and requirements.

## **II. Legal Authority**

SBA is issuing this rule pursuant to its authority under section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), which authorizes the Administrator to make such rules and regulations as deemed necessary to carry out the functions and purposes of the Small Business Act. The Supremacy Clause of the United States Constitution provides that valid federal regulations preempt state and local laws when the latter stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (U.S. Const. art.

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<sup>1</sup> For instance, a 2007 Senate Report criticizes the SBA for “fail[ing] in its mission to respond quickly and effectively to victims’ needs in the weeks and months following the hurricanes [Rita and Katrina]. In some instances, disaster victims waited three months or more for loans to be processed.” S. Rept. 110-64 (2007) at 1. The report emphasized that disaster victims, particularly businesses, needed “*immediate access to capital* and technical assistance within the first 30 days following a disaster to ensure their full recovery.” *Id.* at 1, 7 (emphasis added). This imperative contrasted with the “burdensome and slow” average timeline of 74 days to process loans during hurricanes Rita and Katrina that propelled the contemplated legislative changes. *Id.* at 6-7.

VI, cl. 2; *see also Arizona v. United States*, 567 U.S. 387, 399, 132 S. Ct. 2492, 2501 (2012)).

Congress intended the Small Business Act’s Disaster Loan Program to provide rapid, effective deployment of assistance in the wake of a disaster to avoid additional harms to victims of disasters.<sup>2</sup> Frustration of this goal frustrates a federal purpose, justifying preemption.

### III. Justification for Interim Final Rule and Good Cause Exception

Under 5 U.S.C. 553(b)(B) and 553(d)(3), SBA finds good cause to issue this rule as an interim final rule without prior written notice and comment and with an immediate effective date. Because SBA finds good cause to issue an interim final rule under relevant statutory authority, SBA has complied with the maximum procedural requirements required by Congress. Regardless, the SBA is inviting post-promulgation comment for agency consideration.

Delaying implementation to allow for advance notice and comment and delaying the effective date would be impracticable and contrary to the public interest because:

1. Disaster recovery efforts are ongoing and currently being impeded;
2. Borrowers are currently experiencing undue delays in the repair, rehabilitation, and replacement of their homes and businesses, frustrating the effectiveness of SBA loans in promptly providing needed federal assistance following a Presidentially-declared disaster; by way of example, in the last year, SBA has authorized over \$3 billion with respect to the January 2025 wildfires in California (\$2 billion of which was approved within the first 75 days of the disaster declaration), yet approximately only \$600 million has been disbursed;
3. Continued delay of assistance would exacerbate housing and business instability, economic harm, and public safety and health risks in current and future disaster areas;
4. Continued delay preventing the use of assistance proceeds will further harm victims—many of whom will soon begin accruing interest and payment obligations on

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<sup>2</sup> See footnote 1.

disbursed loans—despite not being able to commence repair, rehabilitation, or replacement of the destroyed or damaged home or building;

5. The immediate problems faced by borrowers, if not addressed, will be repeated by inevitable and unpredictable future disasters;
6. The ongoing delay of assistance to many borrowers poses a threat of rendering the Disaster Loan Program ineffective in a time of crisis; and
7. Immediate regulatory clarity is necessary to ensure uniform administration of the SBA Disaster Loan Program nationwide.

SBA nonetheless invites post-promulgation public comment and will consider all timely submissions in determining whether revisions to this rule are warranted.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 14192, the Regulatory Flexibility Act (5 U.S.C. 601-612), the Congressional Review Act (5 U.S.C. 801-808), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 13132

This rule has federalism implications under Executive Order 13132. SBA has determined that this rule is consistent with the principles of federalism because it preempts state and local law only to the limited extent necessary to resolve conflicts with well-established federal objectives. The rule does not displace state or local health and safety standards and preserves traditional areas of state and local permitting authority except where such requirements obstruct federally authorized disaster assistance from achieving federal objectives through delay in granting and providing approvals which are a condition precedent to construction. The policymaking discretion of state and local authorities is preserved because preemption of state or local requirements would occur only when state and local requirements cause delay and thus interfere with statutorily authorized and clearly expressed federal objectives. State and local requirements are also preserved in that builders still must certify compliance with all substantive

local and state requirements. Further, SBA has determined that prior consultation with State and local officials is impracticable given the emergency nature of this interim final rule.

#### Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that this rule is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. SBA invites comment on its Regulatory Impact Analysis and Regulatory Flexibility Analysis.

#### *Regulatory Impact Analysis*

SBA has drafted the following Regulatory Impact Analysis for the public's information. The disaster loan program authorized under Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is an important federal mechanism established to provide rapid financial assistance to homeowners, business owners, and other victims whose properties are damaged or destroyed as a result of declared disasters. Congress intended the program to operate swiftly to mitigate the severe economic, housing, and public health consequences resulting in the wake of disasters.

In administering the program, SBA has identified recurring delays to recovery caused by state and local requirements. This interim final rule establishes clear federal standards governing use of Disaster Loan Program proceeds when interacting with non-federal governmental authorities and preempts state and local requirements to the extent such requirements delay the use of SBA Disaster Loan Program proceeds. The rule applies where state or local permits or other approvals stand as an obstacle to accomplishing the federal goal of rapid relief.

#### A. Benefits of the Rule

A natural disaster reduces economic activity on impact as it destroys and injures persons and property. A period of recovery involves growing incomes and GDP in the area as physical assets are rebuilt. By accelerating the pace of recovery from natural disaster, the rule would increase GDP and incomes during the recovery period. The rule does not change the amount lent.

SBA acknowledges that GDP and incomes are not pure benefits because the persons and assets involved have opportunity costs. However, in the disaster context, the outside options for workers and owners of destroyed businesses and homes are relatively low because the timing and precise location of natural disasters is unpredictable. The RIA therefore assumes that a fraction of net production and incomes is a benefit, using the fraction of 0.34 estimated in the pandemic economics literature.<sup>3</sup> That is, each \$100 million added to GDP by accelerating the recovery would represent a net benefit of \$34 million.

In fiscal year 2024, SBA loaned \$1.5 billion for disasters to about 18,000 borrowers. SBA expects that, while this rule is in effect, one-third of its disaster loans (about 6,000 annually) and two-thirds of its disaster dollars (about \$500 million annually) will be during Presidentially-declared disasters.

This RIA takes loan amounts as an estimate of the value of assets destroyed at the businesses and homes participating in the program. Assuming a capital-output ratio of 3, the businesses and households participating in the program had output of \$333 million annually associated with the assets destroyed in Presidentially-declared disasters.

Natural disaster recovery times for businesses and households can exceed a year. The average for major hurricanes is 14 months. California's experience with the 2025 Los Angeles wildfires demonstrates variability by region: despite over \$3 billion in approved SBA loans, only 15% of destroyed structures received rebuild permits within one year. The potential for permit-

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<sup>3</sup> See page 11 of Casey B. Mulligan, Economic Activity and the Value of Medical Innovation during a Pandemic, 12 J. Benefit-Cost Analysis 420 (2021). The net-of-opportunity-cost loss is assumed to be entirely labor, which is 70 percent of the factors of production. The paper estimates that 48 percent of the contribution of labor to production is a net surplus in the aggregate that is closely associated with taxation.  $0.34 = 0.7 * 0.48$ .

speed improvements is further illustrated by the building-permit time differential between Denver of almost ten months and Dallas where the approval time averages about two months.<sup>4</sup>

Based on these observations, this RIA assumes two scenarios: one in which the average recovery time is reduced by 2 months and the other by 4 months. SBA notes that the average includes both states that already support rapid recoveries and states that do not. The businesses and households participating in the program during Presidentially-declared disasters had output averaging \$333 million annually, which is \$56 million for two months and \$111 million for four months. Converting the output to net (of opportunity cost) benefits with the 0.34 factor puts the net benefits at \$19 million to \$37 million per year that the rule is in effect. Note that these effects are considered cost savings for purposes of Executive Order 14192 accounting. These output-related net benefits would be somewhat less if they are partially offset by delays in rebuilding by property owners that do not participate in the Disaster Program.

#### B. Costs of the Rule

Depending on the situation, state and local governments with the preempted permitting or approval requirements may adjust staffing or change permitting priorities so that properties that are part of SBA Disaster Programs are more likely to receive their permits/approvals on the SBA timeline. If state and local governments increased permitting/approval staff time by one day per SBA Disaster Loan per year, that would be 48,000 additional staff hours supplied by state and local permitting agencies involved with recoveries from Presidentially-declared disasters. To acknowledge both the capital and labor requirements of paperwork, SBA applies an average dollar cost of an hour of \$84.76, which is national income per hour.<sup>5</sup> Therefore, the projected staffing cost to state and local governments is \$4 million annually.

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<sup>4</sup> See <https://hoverarchitecture.com/building-permit-timelines-explained-how-long-does-it-really-take/>.

<sup>5</sup> Hours worked: <https://www.bls.gov/productivity/tables/additional-requests/usa-annual-hours-and-employment-for-total-economy.xlsx>; National income: National income (A032RC1A027NBEA) | FRED | St. Louis Fed

Alternatively, state and local governments might not adjust their staff time at all, or may even reduce it relative to what would be spent without the rule following a disaster.

### C. Annualized and Net Present Values

Accounting for the costs of state and local government staff time, the net benefits of the rule are expected to be \$15 million to \$33 million annually. At a three percent discount rate, the midpoint net present value benefits over a twenty-year horizon would be \$368 million. At a seven percent discount rate, the net benefits would be \$272 million in net present value.

#### Executive Order 14192

This interim final rule is considered to be an Executive Order 14192 deregulatory action. We estimate that this rule generates \$15 million to \$33 million in annualized cost savings. Taking the midpoint and discounting at seven percent relative to year 2024, this implies annualized net savings of \$19.9 million over a perpetual time horizon.

#### Executive Order 12988

This action meets the standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform. SBA has taken the necessary steps to minimize litigation, eliminate drafting errors and ambiguity, reduce burden, and provide a clear legal standard for affected conduct, and has “specifie[d] in clear language the preemptive effect . . . to be given to the law.”

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required, which, as discussed above, is not the case here. Accordingly, SBA is not required to conduct a regulatory flexibility analysis and is publishing this rule as an interim final rule

without advance notice and public comment. Nonetheless, SBA has prepared a Regulatory Flexibility Analysis for public review and comment.

This interim final rule may have a significant impact on a substantial number of small businesses participating in SBA's Disaster Program. This rule would benefit small businesses by accelerating their rebuilding after a disaster. Small governmental jurisdictions would benefit from more rapid rebuilding in the jurisdictions but may incur additional staffing costs so that properties in their jurisdictions that are part of SBA Disaster Program are more likely to receive their permits/approvals on the SBA timeline.

#### *Initial Regulatory Flexibility Analysis*

Immediately below, SBA sets forth a regulatory flexibility analysis (RFA) of this interim final rule addressing the following questions: (1) What are the reasons for the rule? (2) What are SBA's objectives and legal basis for, the rule? (3) What small entities are regulated? (4) What is the economic impact? (5) Does the rule duplicate, overlap or conflict with other Federal Rules? and (6) What significant alternatives might exist that will allow the Agency to accomplish its regulatory objectives while minimizing the costs on, or maximizing the benefits for, small entities?

Pursuant to 5 U.S.C. 603(a), SBA has transmitted a copy of this regulatory flexibility analysis to the Chief Counsel for Advocacy and received his comments.

##### 1. What are the reasons for the rule?

The Disaster Loan Program authorized under Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is an important federal mechanism established to provide rapid financial assistance to homeowners, business owners and other victims whose properties are damaged or destroyed as a result of declared disasters. Congress intended the program to operate swiftly to mitigate the severe economic, housing, and public health consequences resulting in the wake of disasters.

In administering the program, SBA has identified recurring delays to recovery caused by state and local requirements. This interim final rule establishes clear federal standards governing use of Disaster Loan Program proceeds when interacting with non-federal governmental authorities and preempts state and local requirements to the extent such requirements delay the use of SBA Disaster Loan Program proceeds. The rule applies where state or local permits or other approvals stand as an obstacle to accomplishing the federal goal of rapid relief—returning victims to their pre-disaster lives.

2. What are SBA's objectives and legal basis for, the rule?

SBA issued this rule pursuant to its authority under section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), which authorizes the Administrator to make such rules and regulations as deemed necessary to carry out the functions and purposes of the Small Business Act. The Supremacy Clause of the United States Constitution provides that valid federal regulations preempt state and local laws when the latter stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

3. What small entities are regulated?

The additions to 13 CFR 123 will regulate (1) small business borrowers participating in the SBA Disaster Program and (2) small governmental jurisdictions that have preempted requirements.

Approximately 18,000 borrowers participate in the SBA Disaster Program each year, approximately 3,000 of which are small businesses. They are regulated in the sense that the interim final rule directs them to provide a builder's self-certification of compliance with the preempted state and local requirements rather than waiting for approval from the state and local authorities. Because the exact timing and location of natural disasters are unpredictable, the range of industries likely to be affected resembles the range of industries nationwide.

SBA estimates that less than 100 small government jurisdictions have small businesses in the SBA Disaster Program in any given year. SBA estimates that there are fewer than 90,000

local governments nationwide, some of which are not small government jurisdictions because they have population exceeding 50,000. Because less than one out of 900 small employers nationwide participates in the SBA disaster loan program during Presidentially-declared disasters and natural disasters are geographically concentrated, an even smaller fraction of small governmental jurisdictions has a participating business in their jurisdiction.

Only a fraction of these will have preempted requirements. The number of small governmental jurisdictions directly affected may in a year well be fewer than 50.

Builders and other contractors retained by borrowers may be small businesses but are not directly regulated by this rule.

#### 4. What is the economic impact of the rule?

The RIA section of this rule explains exactly how SBA estimates that the interim final rule would increase the output, including housing services, of borrowers' properties by \$56 million to \$111 million annually. Assuming that 17 percent of the properties are small businesses rather than residential, small business revenue increases by \$10 million to \$19 million annually. These small businesses experience benefits rather than costs.

Fewer than 100 small government jurisdictions may have preempted requirements. They may not incur costs, or even save on staffing time, if they are satisfied with self-certification. Otherwise, they may (1) add some staff time in order to attain the timelines established in this rule or (2) reprioritize their permit queues so that SBA Disaster Program participants receive priority.

#### 5. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

SBA is not aware of any other Federal rule that would duplicate or conflict with requiring borrowers to provide their builder(s)'s self-certification that they have complied, and will continue to comply, with substantive state and local requirements.

6. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the costs on, or maximizing the benefits for, small entities?

The SBA has considered alternative timelines for 13 CFR 123.803. Shorter timelines would not be consistent with the goal of preempting state and local processes to the minimum extent necessary to achieve federal objectives. Longer timelines would not maximize the benefits for the small businesses participating in the Disaster Loan Program or achieve federal objectives of rapid recovery.

#### Congressional Review Act

OIRA has determined that this rule is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 804(2). If a rule is deemed major, the CRA generally provides that the rule may not take effect until at least 60 days following its publication unless the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 808(2). For the reasons discussed in Section III above, SBA finds that there is good cause to dispense with the CRA effective date requirement. The agency believes that delaying the effective date of this final rule would be impracticable and contrary to the public interest.

#### Paperwork Reduction Act

The SBA has determined that this interim final rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. As a result of this interim final rule, a borrower who relies on preemption under § 123.803 will be required to provide a builder's self-certification that the builder has complied with all substantive requirements. As a result of these new requirements, SBA is requesting approval of a new information collection identified below:

#### **Summary of Information Collection:**

*OMB Control No.:* To be assigned.

*Title:* Certification as to State and Local Compliance.

*Description of Respondents:* Disaster loan borrowers and any contractors, subcontractors, or agents of such borrower.

*Form Number:* To be assigned.

*Total Estimated Annual Responses:* 18,000

*Total Estimated Annual Hour Burden:* 9,000

#### Request for Comments

SBA invites public comment on all aspects of this interim final rule, including the scope of the preemption, implementation experience in disaster affected jurisdictions, and any unintended consequences. Comments received will inform any future revisions to the regulation.

#### **List of Subjects in 13 CFR Part 123**

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, 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 for 13 CFR part 123 is revised to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, 9009, and U.S. Const. art. VI, cl. 10.

2. Add Subpart I to Part 123 to read as follows:

Subpart I—Interaction With Non-Federal Requirements

123.800 Purpose.

123.801 Definitions.

123.802 Scope and applicability.

123.803 Federal preemption.

123.804 Supersession of State or Local Requirements.

123.805 Certification as to State and Local Compliance.

123.806 Interference with SBA Disaster Loan Usage.

123.807 Severability.

123.808 Applicability date.

#### **§ 123.800 Purpose.**

(a) *Purpose.* The purpose of this subpart is to ensure SBA Disaster Loans issued pursuant to 15 U.S.C. 636(b) achieve their Congressionally intended goal of rapid repair, rehabilitation and replacement of disaster-damaged real property financed through such loans; to prevent State or Local Requirements (hereafter defined) from delaying and thus frustrating the SBA Disaster Loan program's objective of timely, rapid assistance to and recovery for disaster victims; and to clarify the applicability of certain non-federal laws, codes, ordinances, regulations, permitting requirements, and other administrative practices to federally authorized disaster assistance.

#### **§ 123.801 Definitions.**

(a) *Disaster-Related Activities* are any real property repairs, rehabilitations, replacements, or any associated activities financed in whole or in part by an approved SBA Disaster Loan.

(b) *SBA Disaster Loan* is a loan authorized under 15 U.S.C. 636(b) pursuant to a major disaster declaration under 15 U.S.C. 636(b)(2)(A).

(c) *State or Local Requirement* is any provision of any state or local law, regulation, ordinance, code, or administrative practice that imposes a requirement to have a permit or imposes another approval requirement as a condition precedent to conducting Disaster-Related

Activities, but does not include, for the avoidance of doubt, any substantive underlying requirements that would form the basis of the permit or approval.

### **§ 123.802 Scope and applicability.**

This subpart applies to Disaster-Related Activities and all SBA Disaster Loan borrowers, including any contractors, subcontractors, and agents of such borrowers conducting Disaster-Related Activities.

### **§ 123.803 Federal preemption.**

*Preemption.* Any State or Local Requirement shall be preempted where it is the but-for cause of a delay in conducting Disaster-Related Activities that lasts more than sixty (60) days following the date of the borrower's, or any contractor, subcontractor, or agent of such borrower's, submission of all applicable complete applications or requests for approval to the applicable State or local authorities to proceed with Disaster-Related Activities.

### **§ 123.804 Supersession of State or Local Requirements.**

(a) For Disaster-Related Activities, compliance with State or Local Requirements shall not be required to the extent that such State or Local Requirement creates the condition identified by § 123.803.

(b) Compliance with this subpart and other applicable federal requirements, including the certification under § 123.805, shall be deemed sufficient authorization to proceed with Disaster-Related Activities and the borrower, contractor, subcontractor, or agent of such borrower may proceed with such Disaster-Related Activities without obtaining or complying with the preempted State or Local Requirement.

(c) State and local governments may not enforce stop-work orders, penalties, or enforcement actions against a borrower of an SBA Disaster Loan or any contractor, subcontractor, or agent of such borrower based on failing to meet a preempted State or Local Requirement.

### **§ 123.805 Certifications as to State and Local Compliance.**

An SBA Disaster Loan borrower and any contractors, subcontractors, or agents of such borrower, who seek to engage in Disaster-Related Activities without complying with a State or Local Requirement preempted under § 123.803 may only do so where the SBA Disaster Loan borrower has provided to SBA, prior to commencement of Disaster-Related Activities, through loan closing documentation modifications or other documents provided to the borrower by SBA, a certification by the borrower's builder(s) that the builder has so far, and will in the future, comply with and adhere to any applicable state and local rules and regulations not preempted under § 123.803. Such non-preempted rules and regulations include, but are not limited to, building codes, health and safety requirements, inspection requirements (which may be conducted by local government inspectors or qualified, independent third-party inspectors), and any other processes required to obtain a certificate of occupancy at the completion of Disaster-Related Activities. A borrower relying on preemption under this subpart shall be considered to be in default of the borrower's SBA Disaster Loan if the borrower fails to comply with the provisions of § 123.805 and shall be considered a violation of § 123.9.

#### **§ 123.806 Interference with SBA Disaster Loan Usage.**

- (a) State or local government officials must not unlawfully interfere with, impede, or disrupt the otherwise lawful use of SBA Disaster Loan proceeds under this Part in the name of enforcing a preempted State or Local Requirement.
- (b) State or Local Requirements are preempted only to the extent that they result in a condition identified by § 123.803.

#### **§ 123.807 Severability.**

If any provision of this subpart is held invalid, the remainder of the subpart shall not be affected.

#### **§ 123.808 Applicability date.**

This rule applies to disaster loans approved on or after January 1, 2025.

Kelly Loeffler,

Administrator.

[FR Doc. 2026-01797 Filed: 1/28/2026 8:45 am; Publication Date: 1/29/2026]