

## AUTHORITY FOR DISASTER LAONS

(b)<sup>1</sup> Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, <sup>§ 7(b)(1)(A)</sup> the Administration also is empowered to the extent and in such amounts as provided in advance in <sup>Disaster loans.</sup> appropriation Acts—

(1) (A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters:<sup>2</sup> Provided, That such damage or destruction is not compensated for by insurance or otherwise: And provided further, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate costs of such damage or

<sup>1</sup>Paragraphs 7(b)(1) and 7(b)(2) rewritten by § 1911 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357); the exception for agricultural enterprises was added by § 18006 of P.L. 99-272, approved April 7, 1986 (100 Stat. 366). Section 12064 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409) provides:

(a) IN GENERAL.—The Administrator shall, promptly following the date of enactment of this Act, conduct a study of whether the standard operating procedures of the Administration for loans offered under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) are consistent with the regulations of the Administration for administering the disaster loan program.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a report containing all findings and recommendations of the study conducted under subsection (a).

The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171).

Section 12052 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406) contained the following definitions:

### SEC. 12052. DEFINITIONS.

In this subtitle—

- (1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;
- (2) the term “disaster area” means an area affected by a natural or other disaster, as determined for purposes of paragraph (1) or (2) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), during the period of such declaration;
- (3) the term “disaster loan program of the Administration” means assistance under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;
- (4) the term “disaster update period” means the period beginning on the date on which the President declares a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act) and ending on the date on which such declaration terminates;
- (5) the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster relief and Emergency Assistance Act (42 U.S.C. 5122);
- (6) the term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 636(b)); and
- (7) the term “State” means any State of the United States, the district of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2168).

<sup>2</sup>The phrase “floods, riots or civil disorders, or other catastrophes” in § 7(b)(1)(A) was replaced by current language by subsection 119(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Subsection 119(b) of the same Act provided the definition of “disaster” in § 3(k) of the Small Business Act.

destruction (whether or not compensated for by insurance or otherwise)<sup>3</sup> if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including, including—

(i) construction of retaining walls and sea walls;

(ii) grading and contouring land; and

(iii)<sup>4</sup> relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency.

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: Provided, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere;<sup>5</sup> (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C)<sup>6</sup> during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by <sup>Disaster mitigation pilot program.</sup>

<sup>3</sup> Language following “20 per centum” added by § 12078(b)(1) of P.L. 110-234, approved May 22, 2008 (122 Stat. 1415). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2177). Section 12078(b)(2) provides:

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a loan or guarantee made after the date of enactment of this Act.

<sup>4</sup>Second proviso in subparagraph 7(b)(1)(A) added by § 121 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Language after “mitigating measures” was reorganized and clause (iii) added by § 1102 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 688).

<sup>5</sup>“Credit elsewhere” defined in § 3(h).

<sup>6</sup>New subparagraph 7(b)(1)(C) added by § 1(a) of P.L. 106-24, approved April 27, 1999 (113 Stat. 39). Section 1(c) of P.L. 106-24 provides:

EVALUATION.—On January 31, 2003, the Administrator of the Small Business Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of the pilot program authorized by section 7(b)(1)(C) of the Small Business Act (15 U.S.C. 636(b)(1)(C)), as added by subsection (a) of this section, which report shall include—

(1) information relating to—

(A) the areas served under the pilot program;

(B) the number and dollar value of loans made under the pilot program; and

(C) the estimated savings to the Federal Government resulting from the pilot program; and

(2) such other information as the Administrator determines to be appropriate for evaluating the pilot program.

§ 7(b)(2)(A) to  
§ 7(b)(2)(D)

the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2)<sup>7</sup> to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis as the Administration may determine to be necessary or appropriate) to any small business concern, private nonprofit organization, or small agricultural cooperative<sup>8</sup> located in an area affected by a disaster, (including drought), with respect to both farm-related and nonfarm-related small business concerns,<sup>9</sup> if the Administration determines that the concern, the organization, or

<sup>7</sup> Section 202 of P.L. 107-117, approved Jan. 10, 2002 (115 Stat. 2230) provides:

For purposes of assistance available under section 7(b)(2) [and (4)] of the Small Business Act to small business concerns located in disaster areas declared as a result of the September 11, 2001, terrorist attacks—

(i) the term “small business concern” shall include not-for-profit institutions and small business concerns described in United States Industry Codes 522320, 522390, 523210, 523920, 523991, 524113, 524114, 524126, 524210, 524291, 524292, and 524298 of the North American Industry Classification System (as described in 13 C.F.R. 121.201, as in effect on January 2, 2001);

(ii) the Administrator may apply such size standards as may be promulgated under such section 121.201 after the date of enactment of this provision, but no later than one year following the date of enactment of this Act; and

(iii) payments of interest and principal shall be deferred, and no interest shall accrue during the two-year period following the issuance of such disaster loan.

Section 203 of the same act provides:

Notwithstanding any other provision of law, the limitation on the total amount of loans under section 7(b) of the Small Business Act outstanding and committed to a borrower in the disaster areas declared in response to the September 11, 2001, terrorist attacks shall be increased to \$10,000,000 and the Administrator shall, in lieu of the fee collected under section 7(a)(23)(A) of the Small Business Act, collect an annual fee of 0.25 percent of the outstanding balance of deferred participation loans made under section 7(a) to small businesses adversely affected by the September 11, 2001, terrorist attacks and their aftermath, for a period of one year following the date of enactment and to the extent the costs of such reduced fees are offset by appropriations provided by this Act.

<sup>8</sup>The phrase “small business concern or small agricultural cooperative” or similar conforming language substituted in lieu of “small business concern” throughout § 7(b)(2) by § 311 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Section 312 of P.L. 98-270 provides that this amendment shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under § 7(b)(2)(A), (B), or (C) of the Small Business Act or with respect to which a certification has been made after such date under § 7(b)(2)(D) of such Act. Note: See also § 3(j) of the Small Business Act, defining “small agricultural cooperative.” References to “private nonprofit organization” added by § 12061(a)(1) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2168).

<sup>9</sup> Language regarding drought added by § 845(a)(2) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3390). Section 845(b) of that law provides:

(b) **LIMITATION ON LOANS.**—From funds otherwise appropriated for loans under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), not more than \$9,000,000 may be used during each of fiscal years 2005 through 2008, to provide drought disaster loans to nonfarm-related small business concerns in accordance with this section and the amendments made by this section.

Section 845(d) of P.L. 109-163 provides:

(d) **RULEMAKING.**—Not later than 45 days after the date of enactment of this Act, the Administrator of the Small

the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);<sup>10</sup> or [42 USC 5121].

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph;<sup>11</sup> or

(C)<sup>12</sup> a disaster, as determined by the Administrator of the Small Business Administration; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that<sup>13</sup> small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may<sup>14</sup> then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

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Business Administration shall promulgate final rules to carry out this section and the amendments made by this section.

<sup>10</sup>The reference to the 1950 Act deleted and existing language inserted by subsection 109(f)(1) of P.L. 100-707, approved Nov. 23, 1988 (102 Stat. 4708). “Major disaster” is defined in § 102(2) of the 1974 Act, as amended by § 103(c) of P.L. 100-707, *supra*. Reference changed to the Stafford Act by § 12063(c)(2) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171).

<sup>11</sup>Section 1(a) of P.L. 88-264, approved Feb. 5, 1964 (78 Stat. 7), extended paragraph (2) beyond its former scope relating solely to drought and excessive rainfall disasters. The Act referred to is now the Consolidated Farm and Rural Development Act. Language after the reference to the Consolidated Farm and Rural Development Act added by § 845(a)(2)(B) of P.L. 109-163, approved Jan. 6, 2006 ( 119 Stat. 3390).

<sup>12</sup>Former subparagraphs (C), (D) and (E) were originally added by § 403 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). Subparagraphs (C) and (D) were amended by § 1911 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357), which also deleted previous subparagraph (E). P.L. 98-166, approved Nov. 28, 1983 (97 Stat. 1071 at 1079), provides that beginning with disasters commencing between Jan. 1, 1983, through Sept. 30, 1983, the determination of a natural disaster by the Secretary of Agriculture pursuant to 7 USC 1961 shall be deemed a disaster declaration by the Administrator of SBA for eligibility purposes under § 7(b) (1) for agricultural enterprises as defined in § 18(b) of the Small Business Act.

<sup>13</sup>Section 311 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157), added “or small agricultural cooperatives” here.

<sup>14</sup> The phrase “Upon receipt of such certification, the Administration may” was replaced by the current language by § 845(c) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3391).

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Credit Administration finds that the applicant is not able to obtain credit elsewhere.<sup>15</sup> elsewhere.

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<sup>15</sup>Paragraphs 7(b)(3) and (4), providing non-physical disaster loans to small business concerns, were repealed by § 18006(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 366). Section 18006(b) of P.L. 99-272 provides that SBA should continue to accept, process and approve loan applications under paragraphs (1) - (4) of subsection 7(b) and shall obligate and disburse loan funds on account of disasters declared before Oct. 1, 1985, even if such application is filed after April 7, 1986. P.L. 99-349, approved July 2, 1986 (100 Stat. 718), amends § 18006(b) to apply to a disaster which occurred prior to Oct. 1, 1985, and with respect to which a disaster declaration application was submitted prior to Oct. 1, 1985. The text of repealed paragraphs (3) and (4) is provided:

- (3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith, or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: Provided, That the maximum loan made to any small business concern under this paragraph shall not exceed \$500,000 and the amount thereof shall be based solely on a determination made on each application: Provided further, That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere. For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government Action; and
- (4) To make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall exceed \$100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.

Prior history of repealed paragraphs (3) and (4):

Former §§ 7(b)(3) - 7(b)(9) repealed by § 1913(a) of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). A new § 7(b)(3) was added which contained a “credit elsewhere” test. These amendments were effective Oct. 1, 1981, per § 1918 of P.L. 97-35. See also § 23(2) of the Small Business Act. The words “continuation of” after “in effecting” added by § 308 of P.L. 98-270, approved April 18, 1984, effective Oct. 1, 1983. Words “heretofore or hereafter enacted” were in prior § 7(b)(5) and were originally added by § 302 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553), to resolve the question

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of retroactivity of prior § 7(b)(5).

Elements of this subsection are derived from previous § 7(b)(5) which was added by § 2 of P.L. 93-237, approved Jan. 2, 1974 (87 Stat. 1023). Previous § 7(b)(5) consolidated and expanded existing SBA authority to finance small businesses required to make structural, operational and other changes by Federal laws or State laws enacted in conformity therewith, to comply with environmental, consumer, pollution, and safety standards. The section consolidated three subsections of the Small Business Act into a single section: the Coal Mine Health and Safety Act of 1969 (subsection 7(b)(5) of the Small Business Act), the Occupational Safety and Health Act of 1970 (subsection 7(b)(5)), and the Egg Product Inspection Act of 1970 (which also extended eligibility to small firms affected by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968 (subsection 7(b)(6)). “Credit elsewhere” defined in § 3(h).

The sentence in former § 7(b)(3) relating to payment-in-kind beginning “For the purposes of this paragraph . . .” was added by § 308 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

Former subsection 7(b)(4) added by § 304 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).