



## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 123**

**RIN: 3245- AF99**

### **Immediate, Expedited, and Private Disaster Assistance Loan Programs**

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** The U.S. Small Business Administration (SBA) is seeking comments on this Advance Notice of Proposed Rulemaking (ANPRM) regarding the Immediate Disaster Assistance Program (IDAP), the Expedited Disaster Assistance Program (EDAP), and the Private Disaster Assistance Program (PDAP). Specifically, SBA is seeking comments on the development of proposed regulations for PDAP and EDAP and potential revisions to the existing regulations for IDAP. These programs were authorized by the Small Business Disaster Response and Loan Improvements Act of 2008. The purpose of this ANPRM is to request feedback from potential participants and the public in order to implement these programs in a way that will encourage and enable private sector lenders to participate with SBA to fund loans to disaster survivors.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AF99, by any of the following methods: (1) Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Attn: Michelle Genovese, Office of Capital Access, 409

Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416. All comments will be posted on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to the U.S. Small Business Administration, Attn: Michelle Genovese, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416, or send an email to [michelle.genovese@sba.gov](mailto:michelle.genovese@sba.gov).

Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

**FOR FURTHER INFORMATION CONTACT:** Michelle Genovese, U.S. Small Business Administration, 409 3<sup>rd</sup> Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416, telephone number (202) 401-8282 or [michelle.genovese@sba.gov](mailto:michelle.genovese@sba.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

The Small Business Disaster Response and Loan Improvements Act of 2008 created three new guaranteed disaster loan programs: the Immediate Disaster Assistance Program, the Expedited Disaster Assistance Program, and the Private Disaster Assistance Program. See Pub. L. 110-246 (June 18, 2008). Unlike SBA's direct disaster loan program, authorized by Section 7(b) of the Small Business Act, under which disaster survivors borrow loan funds directly from SBA, the guaranteed disaster loan programs are designed to allow private sector lenders to participate with SBA in the delivery of disaster loans. The purpose of these programs is to provide disaster survivors with additional avenues for disaster relief in order to help them recover as quickly as possible

following a disaster. Details on the features and requirements of each program are described below.

#### Immediate Disaster Assistance Program (IDAP)

The statutory provisions for IDAP may be found in Section 12084 of the Small Business Disaster Response and Loan Improvements Act of 2008, codified at 15 U.S.C. §657n. Under IDAP, SBA guarantees 85% of a loan from participating lenders to small businesses that have suffered physical or economic injury due to a disaster. IDAP loans may be made available for any disaster declared by SBA. The intent of the program is to provide small businesses with immediate access to small dollar loans in the wake of a disaster on an interim basis pending receipt of a direct disaster loan from SBA.

Applicants must meet the basic eligibility requirements for a direct disaster loan from SBA and must apply for the SBA direct disaster loan in order to qualify for the IDAP loan. The IDAP loan has a maximum amount of \$25,000. SBA does not charge any fees on an IDAP loan. If a direct disaster loan is later approved, proceeds from that loan must be applied first to repay the IDAP loan. However, if the direct disaster loan is declined, or if the direct disaster loan covers only a portion of the IDAP loan, the balance of the IDAP loan must have a minimum term of 120 months from the date of final disbursement of the IDAP loan. By regulation, IDAP lenders must be lenders that participate in the guaranteed loan program authorized by Section 7(a) of the Small Business Act. Additionally, by regulation, IDAP is a delegated authority loan program; non-delegated processing is not available.

On October 1, 2010, SBA issued an interim final rule (75 FR 60588) that provided regulatory requirements for the program. These regulations include details on

borrower eligibility requirements, loan terms, fees, and requirements for participating lenders. See 13 CFR § 123.700 - 123.706. SBA did not receive any comments on the interim final rule. On October 25, 2010, SBA issued a Notice in the Federal Register (75 FR 65534) setting the interest rate on IDAP loans at the prime rate plus one percentage point. Pursuant to 13 CFR 123.703, this rate may be changed by publication in the Federal Register from time to time.

#### Expedited Disaster Assistance Program (EDAP)

The statutory provisions for EDAP may be found in Section 12085 of the Small Business Disaster Response and Loan Improvements Act of 2008. Under EDAP, SBA would guarantee short term loans from participating lenders to small businesses that have suffered damage due to a “catastrophic” disaster. Section 7(b)(9) of the Small Business Act provides that if the President declares a major disaster, the SBA Administrator may declare eligibility for additional disaster assistance if the disaster has resulted in extraordinary levels of casualties or damage or disruption severely affecting the population, infrastructure, environment, economy, national morale, or government functions in an area. In order for the SBA Administrator to declare as a catastrophic disaster with eligibility for additional disaster assistance, the disaster must be of such size and scope that SBA’s direct disaster loan program is incapable of providing adequate and timely assistance, or a significant number of businesses outside of the disaster area have suffered substantial economic injury as a result of the disaster.

The maximum amount of an EDAP loan would be \$150,000 and SBA would not charge any fees on the loans. The term of an EDAP loan must be limited to 180 days, with extensions on a case-by-case basis. The EDAP loan may be refinanced by a direct

disaster loan from SBA or other sources. The maximum interest rate must not exceed 300 basis points over the federal funds rate

#### Private Disaster Assistance Program (PDAP)

The statutory provisions for PDAP may be found in Section 12083 of the Small Business Disaster Response and Loan Improvements Act of 2008, codified at 15 U.S.C. 636(c). Under PDAP, SBA is authorized to guarantee not more than 85 percent of a loan from participating lenders to small businesses, homeowners or renters that have suffered damage due to a “catastrophic” disaster, as defined above.

Those eligible for PDAP include homeowners, renters, or small businesses that have suffered physical losses and small businesses that have suffered economic injury as a result of a catastrophic disaster. As required by the statute, any SBA lender participating in the Preferred Lenders Program (PLP) under Section 7(a) of the Small Business Act would be eligible to participate in the PDAP program, and SBA would establish criteria for additional PDAP lenders in regulations. All PDAP lenders would be eligible to make PDAP loans to small businesses, but only PLP lenders would be eligible to make PDAP loans to homeowners or renters.

The maximum amount of a PDAP loan is \$2,000,000. SBA would not charge any fees on the loans. Terms and conditions of PDAP loans would be the same as SBA direct disaster loans.

#### II. Comments Requested

These guaranteed disaster loan programs would provide disaster survivors with additional avenues for disaster relief and give 7(a) participating lenders an opportunity to partner with SBA to assist in the recovery of homeowners and small businesses in their

communities after a disaster. SBA requests comments from the public on features necessary to attract lender participation while providing timely and affordable assistance to disaster survivors. Responders are invited to comment on any or all portions of this ANPRM, and may submit additional comments on issues relevant to IDAP, EDAP and PDAP not specifically covered.

General questions applicable to all three programs include, but are not limited to the following:

1. Interest rate and fees. SBA understands that disaster loans are inherently riskier loans and that lenders use interest rates and fees in order to offset risk. In developing specific program requirements for IDAP, SBA attempted to strike a balance between allowing lenders to mitigate risk and keeping disaster recovery loans affordable. This included capping borrower application fees at \$250, a late payment fee not to exceed 5 percent of the scheduled payment, and limiting the interest rate to the prime rate plus one percentage point. Since then, SBA has received feedback from lenders that the interest rate and fee limitations are too low. Given the general description of each program, what interest rates and fees would be needed to support lender participation in these programs?

2. Borrower eligibility. For all three guaranteed disaster loan programs, borrowers must meet the same eligibility requirements as borrowers in SBA's direct disaster loan program. These requirements are generally contained in the following regulations in Title 13 of the Code of Federal Regulations: for individuals, §§ 123.100 and 123.101; for businesses with physical damage, §§ 123.200 and 123.201; and for

businesses with economic injury, §§ 123.300 and 123.301. For IDAP, the eligibility requirements are set forth in 13 CFR 123.702.

Only borrowers who sustained physical or economic damages and who are located in an eligible disaster area would be eligible for loans under the guaranteed disaster loan programs. Before making a direct disaster loan for physical damage, SBA performs an on-site verification of the losses resulting from the declared disaster in order to determine the eligible loan amount. For both economic injury and physical damage loans, SBA must also verify the location of the borrower. How would a loss verification process affect lender costs? SBA seeks input from potential lenders regarding their ability to make loans in accordance with these requirements. For example, should SBA allow lenders to rely on borrowers' self-certifications when determining eligibility? Comments may address, among other things, verification of borrower eligibility, borrower rights of appeal, liability for false statements by borrowers, and the level of training/instruction required to participate in the programs.

3. Duplication of benefits. By statute, SBA direct disaster loans are only available for physical damages or economic injury that is not compensated by other sources in order to avoid a duplication of benefits. If there are no other recoveries, a disaster loan borrower is generally eligible to borrow up to the amount of their disaster losses, as long as the amount is within statutory or regulatory limits and the borrower has repayment ability. If the borrower has received any funds from other sources for the same losses, however, the amount of the disaster loan must be reduced. All three guaranteed disaster loan programs must adhere to this same requirement. Other sources include proceeds from insurance or other indemnifications, grants or other reimbursement

(including loans) from government agencies or private organizations, gifts, condemnation awards, and salvage (including any sale or re-use) of items of disaster-damaged property.

What concerns, if any, do lenders have regarding their ability to evaluate borrower eligibility in accordance with this requirement?

4. Catastrophic disasters. PDAP and EDAP are only available in “catastrophic” disasters (as discussed above); IDAP is available in any SBA-declared disaster that SBA designates as IDAP-eligible. Would lenders be interested in making guaranteed PDAP and EDAP loans for disasters other than “catastrophic” disasters? PDAP loans are intended to be long-term guaranteed disaster loans. Are lenders prepared to underwrite these types of loans following a catastrophic disaster, when resources and access to the disaster site may be limited? Would a catastrophic disaster affect the ability of lenders to deliver PDAP and EDAP loans in a timely manner?

5. Timing. Disasters are, by definition, sudden events that cause severe damage in the affected areas. How quickly would participating lenders be able to make IDAP, EDAP and PDAP loans available to disaster survivors after SBA identifies a disaster as eligible for the IDAP program or the SBA Administrator declares eligibility for additional disaster assistance due to a catastrophic disaster?

6. Conflict of interest. SBA recognizes that lenders that participate in any of the three guaranteed disaster loan programs may be more likely to use the program(s) to lend to their existing depositors and borrowers. This could be the result of the lender’s greater familiarity and experience with the depositor or borrower, which would be particularly useful if business or personal records have been destroyed in the disaster. SBA 7(a) lenders and IDAP lenders are subject to the requirements of 13 CFR 120.140 (What

ethical requirements apply to participants?). SBA invites comments on whether there are any additional relationships or transactions that should be restricted in the guaranteed disaster loan programs due to the potential for a conflict of interest on the part of the lender that might put the SBA-guaranteed disaster loan at greater risk than would otherwise be the case.<sup>7</sup>

#### IDAP specific issues

7. Term of loan. IDAP loans are designed to be interim loans that will be repaid with the proceeds of a direct disaster loan from SBA. If SBA does not approve an IDAP borrower for a direct disaster loan in the amount of the IDAP loan, the remaining balance of the IDAP loan, by statute, must have a term of at least ten years from the date of final disbursement. Lenders have indicated concern that a ten year repayment period is too long. What is the appropriate repayment term for an IDAP loan if a direct disaster loan sufficient to repay the IDAP loan is not approved by SBA?

8. Servicing and Liquidation. Unlike servicing and liquidation for regular 7(a) loans, SBA regulations require an IDAP lender to service and liquidate IDAP loans in accordance with the existing practices and procedures that the IDAP lender uses for its non-SBA guaranteed commercial loans. See 13 CFR 123.706(d) and (e). What concerns, if any, do lenders have regarding these requirements?

#### EDAP specific issues

9. Guaranty percentage. Unlike for IDAP and PDAP, the statute did not set a guaranty percentage for EDAP. What guaranty percentage would lenders require in order to make EDAP loans?

10. Refinancing option. Even though the term of an EDAP loan is limited to 180 days (with extensions on a case-by-case basis), the statute gives SBA the authority to refinance EDAP loans with the proceeds of direct disaster loans. Would a refinancing option make EDAP a more attractive loan product?

11. Use of proceeds. The statute requires SBA to specify whether EDAP proceeds may be used for the following purposes: paying employees; paying bills and other financial obligations; making repairs; purchasing inventory; restarting or operating a small business concern in the community in which it was conducting operations prior to the applicable major disaster, or to a neighboring area, county, or parish in the disaster area; or covering additional costs until the small business concern is able to obtain funding through insurance claims, Federal assistance programs, or other sources. SBA seeks input on which uses of proceeds, included those listed above or others recommended by commenters, would be appropriate for EDAP loans.

PDAP specific issues

12. Term of loan. The term of an SBA direct disaster loan is determined based on the borrower's ability to repay. The maximum term is 30 years, and the average loan term is 18.5 years. PDAP loans may have maturities of up to 30 years. Would lenders be willing to make a PDAP loan of up to 30 years? If not, what is the maximum loan term that lenders would consider suitable in the PDAP program

13. Amount of loan. The amount of direct disaster loans to homeowners and renters are capped by regulation. Generally, the regulations allow up to \$40,000 for personal property, \$200,000 for repair or replacement of a primary residence, and \$200,000 for refinancing. See 13 CFR 123.105. Are lenders willing to make guaranteed

disaster loans to homeowners and renters in these amounts? If not, what is the range of loan amounts that lenders would prefer?

14. Collateral. SBA does not require collateral for direct disaster loans made in response to major disasters if the loan is \$25,000 or less. See 13 CFR 123.11. Are lenders willing to make guaranteed disaster loans of up to \$25,000 with no collateral? Additionally, SBA permits liens on direct disaster loans to be in a subordinate position. Are lenders willing to make guaranteed disaster loans if the loan will be secured by a lien in a subordinate position?

15. Consumer lending. Only PLP lenders are eligible to make PDAP loans to homeowners and renters. PLP lenders are authorized by SBA to make commercial loans, and are not screened in any way for capacity to make and service loans to individuals for residential mortgages or improvements. Do PLP lenders have the expertise to make non-commercial guaranteed disaster loans, or should they be made by other lender units organized to make consumer loans? What training would be required for a PLP or other lender, and what are the concerns about the costs associated with developing the requisite skills? In addition, guaranteed loans to homeowners and renters may require compliance with consumer lending requirements. Do lenders have any concerns about the costs associated with compliance with such requirements? Should SBA's guarantee be conditioned upon a lender's compliance with these consumer lending requirements?

16. Delegated authority lending. PLP lenders are authorized to make PDAP loans to homeowners and renters, as well as small businesses. Will PLP lenders want all PDAP loans to be made under delegated authority? Other lenders are authorized to make loans to small businesses. Do other lenders want PDAP loans to small businesses to be made

under delegated authority? If SBA determines that a PLP lender participating in PDAP knowingly fails to comply with the underwriting standards for PDAP loans, the statute requires SBA to exclude the PLP lender from participating in PDAP or exclude the PLP lender from the 7(a) PLP program for up to five years. Are PLP lenders less likely to participate in PDAP given these compliance requirements?

17. Sale of the Guarantee. SBA permits the sale of the guarantee on loans made in its other business loan programs. Would the sale of guarantees be a key factor in determining lender participation in PDAP?

**Maria Contreras-Sweet,**  
*Administrator.*

[FR Doc. 2015-26532 Filed: 10/20/2015 08:45 am; Publication Date: 10/21/2015]