

Small Business Administration

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interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

[66 FR 38530, July 25, 2001, as amended at 67 FR 64519, Oct. 21, 2002]

§ 123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

Your business is ineligible for a Military Reservist EIDL if it, together with its affiliates, is subject to any of the following conditions:

(a) Any of your business' principal owners has been convicted, during the past year, of a felony during and in connection with a riot or civil disorder;

(b) You have assumed the risk associated with employing the military reservist, as determined by SBA (for example, hiring the "essential employee" after the employee has received call-up orders or been notified that they are imminent);

(c) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. (See 13 CFR 121.107, "How does SBA determine a concern's primary industry?") Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of the business is not an agricultural enterprise, it may apply for a Military Reservist EIDL, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural enterprises;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than an insignificant gross revenue through the sale of products or services, or through the presentation of

any depictions or displays, of a prurient sexual nature;

(h) Your business is engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business is not a small business concern;

(l) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(m) Your business is a loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(n) Your business' principal activity is teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(o) Your business' principal activity is political or lobbying activities.

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date your essential employee receives notice of expected call-up and ending one year after the date the essential employee is discharged or released from active duty. The Associate Administrator for Disaster Assistance (AA/DA) or designee may extend the one year limit by no more than one additional year after finding extraordinary or unforeseeable circumstances.

[73 FR 54675, Sept. 23, 2008]

§ 123.504 How do you apply for a Military Reservist EIDL?

To apply for a Military Reservist EIDL you must complete a SBA Military Reservist EIDL application package (SBA Form 5R and supporting documentation *can be obtained through SBA's Disaster Area Office*) including:

(a) A copy of the essential employee's official call-up orders for active duty showing the date of call-up, and, if known, the date of release from active duty. For an essential employee who expects to be called up and who has not

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received official call-up orders, the application shall include the notice of the expected call-up including, if known, the expected date of call-up and expected date of release from active duty;

(b) A statement from the business owner that the reservist is essential to the successful day-to-day operations of the business (detailing the employee's duties and responsibilities and explaining why these duties and responsibilities can't be completed in the essential employee's absence);

(c) A certification by the essential employee supporting that he or she concurs with the business owner's statement as described in paragraph (b) of this section;

(d) A written explanation and financial estimate of how the call-up of the essential employee has or will result in economic injury to your business;

(e) The steps your business is taking to alleviate the economic injury; and

(f) The business owners' certification that the essential employee will be offered the same or a similar job upon the employee's return from active duty.

[61 FR 3304, Jan. 31, 1996, as amended at 73 FR 54675, Sept. 23, 2008]

§ 123.505 What if you are both an essential employee and the owner of the small business and you started active duty before applying for a Military Reservist EIDL?

If you are both an essential employee and the owner of the small business and you started active duty before applying for an Military Reservist EIDL, a person who has a power of attorney with the authority to borrow and make other related commitments on your behalf, may complete and submit the EIDL loan application package for you.

§ 123.506 How much can you borrow under the Military Reservist EIDL Program?

You can borrow an amount equal to the substantial economic injury you have suffered or are likely to suffer until normal operations resume as a result of the absence of one or more essential employees called to active duty, up to a maximum of \$2 million.

[73 FR 54675, Sept. 23, 2008]

13 CFR Ch. I (1-1-10 Edition)

§ 123.507 Under what circumstances will SBA consider waiving the \$2 million loan limit?

SBA will consider waiving the \$2 million dollar limit if you can certify to the following conditions and SBA approves of such certification based on the information supplied in your application:

(a) Your small business is a major source of employment. A major source of employment:

(1) Employs 10 percent or more of the work force within the commuting area of the geographically identifiable community (no larger than a county) in which the business employing the essential employee is located, provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employs 5 percent of the work force in an industry within such commuting area and, if the small business is a non-manufacturing small business, employs no less than 50 employees in the same commuting area, or if the small business is a manufacturing small business, employs no less than 150 employees in the commuting area; or

(3) Employs no less than 250 employees within such commuting area;

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active duty during a period of military conflict, and a loan in excess of \$2 million is necessary to reopen or keep open the small business; and

(c) Your small business has used all reasonably available funds from the small business, its affiliates, its principal owners and all available credit elsewhere to alleviate the small business' economic injury. Credit elsewhere means financing from non-Federal sources on reasonable terms given your available cash flow and disposable assets which SBA believes your small business, its affiliates and principal owners could obtain.

[61 FR 3304, Jan. 31, 1996, as amended at 73 FR 54675, Sept. 23, 2008]