

§ 206.372

44 CFR Ch. I (10–1–10 Edition)

over an extended period of time, additional time may be provided for loan repayment (see § 206.377(c)).

(f) *Use of loan funds.* The local government shall use the loaned funds to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Stafford Act.

(g) *Relation to other assistance.* Any Special Community Disaster Loans including cancellations of loans made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance provided under the authority of the Stafford Act or this part.

(h) *Cancellation.* The Director of the Public Assistance Division shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that he/she determines that revenues of the local government during the three full fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2817, Jan. 19, 2010]

§ 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, the application for loan cancellation, if submitted, and §§ 206.370 through 206.377. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the Director of the Public Assistance Division.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed in-

debtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Director of the Public Assistance Division. He/she may also submit appropriate recommendations to the Director of the Public Assistance Division.

(d) The Director of the Public Assistance Division or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Director of the Public Assistance Division shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Administrator. The Director of the Public Assistance Division shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2818, Jan. 19, 2010]

§ 206.373 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General*. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues*. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance*. The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Displacement of revenue-producing business due to property destruction;

(vii) Necessity to reduce or eliminate essential services; and

(viii) Danger of municipal insolvency.

[70 FR 60446, Oct. 18, 2005]

§ 206.374 Loan application.

(a) *Application*. (1) The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Administrator to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State