

## **Analysis of the Code of Federal Regulations (CFR) Title 13 to support the development of an alternative fee-based option for Small Business Administration (SBA)**

### Overview

A large portion of the financial assistance for qualified individuals available under a Presidentially Declared Disaster stems from FEMA's Individuals and Households Program (IHP), coupled with SBA loans. SBA loans require compounded interest payments which are not in accord with the religious tenets of Muslims, Orthodox Jews, and some Christian denominations. These faith communities are strictly prohibited from paying or collecting variable amounts when lending or paying for loans of money, as is when entering a contract bearing interest on a loan. It's viewed as exploitative as defined by their respective religious beliefs. However, it is possible for them to pay for funds borrowed through a fee-based loan instrument, with a fixed-rate and not compounding. Due to the fact that the SBA as an agency has stated they do not possess the statutory authority to create any fee-based product, including the Disaster Loan Program in §Part 123 of Title 13 of the CFR, a statutory change to the CFR would be required.

### CFR Title 13 §Part 123

As it may take time for a statutory change to be finalized and implemented in the CFR Title 13 §Part 123; it would be helpful for the SBA to further articulate why §Part 123.1<sup>1</sup> would not allow for an interim amendment to the Disaster Loan Program to allow for the introduction of a fee-based loan product?

Within the context of this analysis, the Disaster Loan Program as it stands would currently exclude access to the following programs:

- Home Disaster Loans
- Physical Disaster Business Loans
- Economic Injury Disaster Loans
- Pre-Disaster Mitigation Loans
- Military Reservist Economic Injury Disaster Loans

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<sup>1</sup> "Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change the rules in this part, without advance notice, by publishing interim emergency regulations in the FEDERAL REGISTER.

[61 FR 3304, Jan. 31, 1996, as amended at 75 FR 60597, Oct. 1, 2010]"

- Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

The only exception would be found in Subpart H – Immediate Disaster Assistance Program; whereas §Part 123.705 makes no mention of any interest to be allowed to be collected.

### Congruency within CFR Title 13

Within Title 13 language already exists to support a statutory change that would ultimately create congruency with non-discrimination regulations and inclusion for the Disaster Loan Program. §Part 112.2, 112.5 and §Part 113.3-1, 113.3-2 and 113.205; all discuss non-discrimination on the basis of religious observance and practice as applied to both individuals and institutions.

It is important to note that there is no language that expressly prohibits statutory change of the type being proposed in this analysis. Within §Part 123 there are numerous sections where language would require minimal change, and rather additional language to then be followed by implementation. Sections most critical for revision include §Part 123.2, 123.5, 123.8 and 123.16/17. This would subsequently guide revisions of Subparts B-G and address most critically sections concerning “interest rates”.

### Recommendation

This analysis supports the recommendation that a regulatory change authorized by SBA or for SBA be made that will allow for the creation of a fee-based option for eligible individuals/households which will meet the religious observances and practices of currently excluded populations. As referenced above there is flexibility and opportunity within the CFR to support this statutory change, but furthermore it is imperative that §Part 112 and 113 be utilized support the efforts of making this statutory change. Also, it is recommended that we look at programs like IDAP and other SBA products that currently exist which meet the criteria being sought in the development of a disaster loan alternative. Finally, it is recommended that we look at other SBA products which increase economic and community recovery, mitigation, and community resiliency, by loans to small businesses owned by these faith groups and others who may prefer this type of financial instrument.

### Next Steps

The National VOAD Advocacy Committee is seeking interested Congressional Representative who may be interested in exploring this issue further, to include drafting a proposed bill to enact a regulatory change.