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Peggy Maisel

Boston University School of Law

Natalie Roman

Florida International University College of Law

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FLORIDA INTERNATIONAL UNIVERSITY

Small Business Disaster Assistance

By

Peggy Maisel & Natalie Roman

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Small Business Disaster Assistance

Peggy Maisel and Natalie Roman

I. Introduction

When a disaster hits, it affects the entire community. A small business, which is defined by the Small Business Administration as “one that is independently owned and operated, is organized for profit, and is not dominant in its field,”¹ is especially vulnerable because it does not necessarily have the resources to respond to a disaster or to catastrophic damage.² In fact, it is reported that approximately 25 percent of small businesses that close due to a disaster never reopen,³ and 40 percent of small businesses hit directly by a serious natural disaster do not recover.⁴ This is true regardless of what kind of disaster is involved, from a hurricane, a tornado, an earthquake, flooding, winter storms, or even civil unrest or terrorism.⁵

Small businesses experience a number of different problems when a disaster hits. As expected, there is the physical damage that results from a disaster, which is a more serious issue when the business is not insured or is underinsured for the damage.⁶ However, the most serious and critical problem for small businesses is the loss of profits due to closure or loss of customers as a result of a disaster.⁷ Sixty-two percent of businesses report the loss of sales as their main problem after a disaster.⁸ Unfortunately, a large percent of businesses does not carry insurance to cover continuing operations.⁹

Fortunately, some economic assistance is available to small businesses that have suffered losses due to disasters. Immediate disaster assistance is led by state governments, which is complemented with federal assistance for disasters that qualify. Federal disaster assistance, which is generally the same regardless of the location and form of a disaster, is discussed first. This is followed by a discussion of state disaster assistance, using the state of Florida to exemplify two approaches taken by state government to provide small-business disaster relief.

II. Federal Assistance

To trigger federal disaster assistance, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) requires that the president declare a disaster or a catastrophe.¹⁰ Federal disaster assistance is supplemental to state expenditures, and follows a request from the governor of the affected state indicating that “the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that the federal assistance is necessary.”¹¹ A federal disaster declaration establishes the geographic area that is eligible for assistance, the type of assistance that is available, and those who are eligible for assistance.¹² Although a declaration opens a wide array of federal assistance for the state, federal assistance provided directly to small businesses is limited to disaster aid from the Small Business Administration (SBA) and the IRS.¹³ The Federal Emergency Management Agency (FEMA) does not provide grants for businesses to recover from a disaster.¹⁴ Indirect federal disaster assistance is also available for small businesses through the Community Development Block Grant Disaster Recovery Program (CDBG-DR) administered by the U.S. Department of Housing and Urban Development (HUD).

A. Small Business Administration

The SBA provides assistance to small businesses in the form of loans, education, advocacy, and assistance in procuring government contracts. In the wake of a disaster, the SBA also assists small businesses through its Disaster Loan Program. Between 2000 and 2009, the SBA provided 73,519 business disaster loans for a total of \$7.75 billion.¹⁵ To be eligible for these loans, the business had to be located in a federally declared disaster area and to have suffered uninsured physical harm or economic injury.

These loans are offered to help businesses repair, rebuild, and recover from economic loss after a disaster. SBA disaster loans are a form of long-term disaster assistance, with loan terms of up to 30 years.¹⁶ They are meant to assist borrowers who, as a result of a disaster, have incurred physical losses that are not covered by insurance.¹⁷ Unlike other loan programs administered by the SBA, which are funded by third-party lenders, the SBA’s Disaster Loan Program is directly funded by the SBA¹⁸ and is backed by the federal government.¹⁹ The SBA’s government-backed loans have lower costs than loans made by financial institutions. For example, fees paid by borrowers are capped by law.²⁰ Interest rates are also capped, and are usually

below rates from traditional financial institutions. SBA loans are referred to as subsidized loans because fees and interest rates charged on SBA loans are insufficient to cover the cost of defaulted loans; this cost is termed the “subsidy cost.”²¹

The SBA Disaster Loan Program consists of two types of loans: Business Physical Disaster Loans (BPDL) and Economic Injury Disaster Loans (EIDL).²² As with other forms of federal disaster assistance, these two types of loans are only available in declared disaster areas.²³ A federal disaster declaration will set forth the geographic area that is eligible for assistance, as well as the type of assistance that is available, the interest rate, and those who are eligible to receive assistance.²⁴ For purposes of the Disaster Loan Program, disaster declarations are “official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riot, civil disorders, or industrial accidents such as oil spills.”²⁵ The incident is usually sudden and causes severe physical damage and/or substantial economic injury. However, small businesses that are injured by droughts and below-average water levels may also qualify if a disaster is declared.²⁶

In addition to disaster declarations made by the president through the Stafford Act,²⁷ the SBA can also make disaster loans available to businesses through disaster declarations made directly by the SBA.²⁸ There are three types of SBA declarations that provide access for business to disaster loans. A physical disaster declaration made by the SBA administrator or at the request of the governor of an affected state will make disaster loans available to businesses of all sizes.²⁹ The SBA administrator can also issue economic injury disaster declarations when the governor of an affected state certifies that at least five small businesses have suffered substantial economic injury as a result of a disaster and there is no other viable form of financial assistance. Additionally, the SBA administrator can issue an economic injury disaster declaration when the secretary of the Department of Agriculture makes a determination of a natural disaster.³⁰ For example, due to the extensive drought suffered in the Midwest during the summer of 2012, more than half of the counties in the United States—1,584 in 32 states—were declared disaster areas by the secretary of agriculture.³¹ As a result, small businesses located in these counties were eligible for Economic Injury Disaster Loans.³²

1. Business Physical Disaster Loans

BPDLs are available to both large and small businesses that are located in a declared disaster area.³³ Funds derived from BPDLs can be used to repair and replace damaged real property, machinery, equipment, fixtures, inventory, and to cover uninsured or underinsured losses.³⁴ Additionally, the SBA has the discretion to increase a BPDL by up to 20 percent of the total amount of damage to make real property improvements that will protect the property against the same type of disasters in the future.³⁵ Under certain conditions, the BPDL can also be used to refinance all or part of the mortgage on the business.³⁶ However, loans cannot be used to expand a business unless it is required by local building codes.³⁷

2. Economic Injury Disaster Loans

Unlike BPDs, EIDLs are only available to small businesses.³⁸ EIDLs are available even if the disaster did not cause any property damage since they are designed to assist businesses with economic injury resulting from a disaster. Economic injury is defined as “economic harm to a business concern that results in its inability to meet its obligations as they mature or pay its ordinary and necessary operating expenses.”³⁹ A “[l]oss of anticipated profits or a drop in sales is not considered substantial economic injury” for the purpose of disaster loans.⁴⁰ EIDLs are designed to provide working capital for businesses to meet the financial obligations that they could have met if not for the disaster, but not in excess of what they would have paid if the disaster had not occurred.⁴¹ They are only available to businesses that are unable to obtain credit elsewhere.⁴² Note that EIDL loans cannot refinance long-term debts or provide working capital that was needed prior to the disaster, and the EIDL cannot be used to replace sales or lost profits.⁴³

Disaster loan amounts are capped at \$2 million total, including physical damage and economic injury assistance.⁴⁴ The interest rate for both BPDs and EIDLs depends on whether the borrower has credit available elsewhere: for those who do, the interest rate is capped at 8 percent; for those who do not, the interest is capped at 4 percent.⁴⁵ Although the SBA will not decline a loan if there is insufficient collateral, BPDs over \$14,000 and all EIDLs over \$5,000 must be secured as much as possible, which may require a first or second mortgage on the business’s damaged real property.⁴⁶ If the business does not have any real estate, the SBA will accept the best available collateral.⁴⁷ A principal of the business must personally guarantee repayment of the loan and is sometimes required to secure the loan by pledging additional collateral.⁴⁸

Businesses can apply directly to the SBA.⁴⁹ Forms are available online⁵⁰ and the application can also be completed electronically.⁵¹ After the application is completed and all necessary documents are provided to the SBA,⁵² an investigator visits the property to estimate the cost of repair, after which the loan officer determines eligibility.⁵³ Once the loan is approved, the SBA disburses the first \$14,000; the rest is disbursed after securing the collateral for the loan.⁵⁴ Rather than disbursing the loan in a lump sum, borrowers draw down the loan balance as repairs are made.⁵⁵

Unfortunately, the SBA’s Disaster Loan Program has not always worked efficiently and therefore has sometimes failed to timely assist those in need of its funding. One example is the experience of small-business owners after the 1992 Los Angeles riots, which was the first such disturbance to receive a presidential disaster declaration.⁵⁶ The riots, which scorched Los Angeles in April and May 1992, damaged or destroyed more than 2,500 Korean-American merchants’ businesses. A survey of 150 Korean-American merchants conducted by the Mid-Wilshire Neighborhood Opportunity Center, a federal office established by the Presidential Task Force on Los Angeles Recovery, found that even though the average business loss was \$180,816, the average SBA recovery loan was \$136,894, supplemented only by an average of \$6,636 from FEMA.⁵⁷ An estimated 20 percent of the applicants were

not eligible because of insufficient collateral or other reasons.⁵⁸ According to the Mid-Wilshire Center, by December 1992, over six months after the disaster, many of the SBA applications were still pending.

By this time, emergency relief had begun to dry up while merchants continued to struggle with unpaid bills and insurance companies' unpaid claims as they entered a precarious time of transitioning from rebuilding to long-term recovery. According to another survey of 322 merchants by the Korean-American Inter-Agency Council, a community-based coalition, the greatest problem encountered by these business owners was maintaining their mortgage payments while "weav[ing] through the government maze of assistance programs, their journey hampered by shaky English."⁵⁹ More than half of business owners also did not have insurance, and those that did had difficulty collecting their insurance proceeds because their insurance companies had insufficient assets to cover claims.⁶⁰ The business owners had also found the application process for government assistance "daunting and burdensome," which was compounded by delayed check distributions due to the SBA's inefficiency, so the businesses were still unable to pay their bills.⁶¹

The SBA's inefficiency and delay were especially visible in the agency's response to the Gulf Coast hurricanes of 2005. Two years after Hurricanes Katrina and Rita had devastated the region, the SBA still had a backlog of unprocessed loans.⁶² SBA loan approval rates, which had averaged 60 percent for previous hurricanes, dropped to 33 percent.⁶³ Of those that it had approved, the SBA had failed to disburse more than 90,000 loans and only 22 percent of approved loans had been fully funded.⁶⁴

Due to these criticisms, the SBA instituted many reforms, some of which were mandated by Congress.⁶⁵ Among these were the creation of an electronic loan application and the expansion of its disaster reserve staff.⁶⁶ However, in November 2011, the SBA had not yet complied with all the congressional requirements.⁶⁷ There were still complaints that disaster loans are not available soon enough after a disaster and that it can take months for these funds to be disbursed, making it even more difficult for businesses to recover if no other funds are available.⁶⁸

Unfortunately, this created problems when Superstorm Sandy devastated the northeastern United States in October 2012. While some improvements were seen in the SBA's response to the disaster, the SBA was slow to disburse disaster loans.⁶⁹ In early January 2013, nine weeks after the storm, even though 4,212 businesses had applied for disaster loans, only 246 applications had been approved and there were no reports of how many loans had been disbursed.⁷⁰ The SBA Disaster Loan Program was also not fully funded by Congress until January 15, 2013, when Congress finally appropriated \$800 million for the program.⁷¹

The application continued to be cumbersome, consisting of at least 30 pages of forms and requiring supporting documentation that often had been destroyed because of the storm.⁷² More concerning was the inability of many businesses to take on more debt, the only form of federal assistance available to them, especially with the uncertainty of being able to reopen.⁷³ Many were also overextended, running

on very thin margins. With the heavy cost of rebuilding, many simply felt that they could not afford more loans since they had no prospect of customers for an extended time period.⁷⁴

All this indicates is that the paperwork for the application process and the tax information requirement for the Disaster Loan Program continue to be burdensome.⁷⁵ As a result, the program's "laborious application process, stringent eligibility criteria, and voluminous documentation requirements often thwart attempts for businesses to access government funding."⁷⁶ This is made worse by the requirement of collateral to secure the loans. If the business does not have equipment or other assets that can serve as collateral, the principals, partners, and owners of these small businesses must secure the loan with their personal assets.⁷⁷ This is a high risk to take, and usually avoided.⁷⁸ This may make disaster loans unavailable to those businesses that are perhaps in most need of capital, and causes many of these small-business owners to deplete their personal savings and retirement accounts, take second mortgages on their homes, and max out their credit card borrowing limits in order to stay afloat.⁷⁹

B. Internal Revenue Service

Assistance from the IRS is mainly in the form of tax deductions, waivers or extensions for making payments, and assistance in filing and obtaining copies of tax returns. Information on how to receive assistance from the IRS in the aftermath of a disaster can be found in Publication 2194, *Disaster Resource Guide for Individuals and Businesses*, available on the IRS website⁸⁰ or through the IRS Disaster Assistance Hotline.⁸¹

Some losses incurred by businesses as a result of a disaster can be deducted from federal income tax returns as casualty losses. Casualty losses are those that result from "the damage, destruction or loss of your property from any sudden, unexpected, or unusual event such as a flood, hurricane, tornado, fire, earthquake or even volcanic eruption."⁸² These losses can be deducted if they are not covered by insurance or other form of reimbursement.⁸³ Although casualty losses are generally deductible in the year that they occur, if the business paid taxes the year preceding the federally declared disaster, the business can choose to receive a refund of some (or all) of the taxes paid by deducting the loss in the prior year through the filing of an amended return.⁸⁴

During some disasters, the IRS may provide other forms of disaster relief, such as waiver of penalties, filing extensions, and other forms of disaster-specific relief.⁸⁵ However, since these classes of relief are specific for each disaster, it is not possible to know beforehand what form of relief is available. IRS assistance agents located at IRS Service Centers and FEMA Disaster Recovery Centers will be aware of the specific relief available to businesses.⁸⁶ Additionally, the IRS can make individualized decisions, and it requests those who have ongoing IRS collection matters to contact it so that appropriate consideration can be made in each case.

If a business requires assistance with filing tax returns, it can also find free assistance at IRS Service Centers and FEMA Disaster Recovery Centers.⁸⁷ This can be important, because a business needs to have filed all of its tax returns in order to qualify for federal disaster assistance. If the business needs copies of tax returns in order to apply for benefits or to file amended returns to claim casualty losses after a disaster, the IRS will also provide and expedite, free of charge, copies of tax returns or tax transcripts.⁸⁸

It has been suggested that ad hoc IRS tax policies do not serve those affected by disasters as effectively as they could because money does not reach victims quickly enough.⁸⁹ A further criticism is that these ad hoc measures are both under- and over-inclusive and are not truly equitable to all victims of a disaster.⁹⁰ For example, tax relief after the 2005 Gulf Coast hurricanes defined six classes of victims, creating a preferential class of victims for the purpose of tax relief.⁹¹ It is proposed that Congress enact legislation that establishes what forms of tax relief are available after a disaster and to make relief available immediately for all federally declared disasters.⁹² This relief should be based on what victims will predictably need: extensions of time to file and pay taxes, removal of penalties for late payments, availability of copies of tax returns, and tax benefits for nonprofits assisting after the disaster.⁹³

C. Community Development Block Grants Disaster Recovery

The CDBG program, managed by HUD, operates to “ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses.”⁹⁴ This section provides a general overview of the program.

The CDBG program is “the federal government’s largest and most widely available source of financial assistance to support state and local government-directed neighborhood revitalization, housing rehabilitation, and economic development activities.”⁹⁵ It is funded annually through congressional appropriations and grants allotted to states and local governments based on a set formula.⁹⁶

CDBGs are extremely flexible and can be used to fund any combination of 25 eligible activities, limited only to meeting *one* of three national objectives: to “principally benefit low and moderate income persons; [to] aid in eliminating or preventing slums or blight; or [to] meet particularly urgent community development needs because existing conditions pose a serious and immediate threat to the public.”⁹⁷ This flexibility exists so that community planning and urban development can remain under local discretion and control, which allow states and local governments more creativity to meet their communities’ needs.⁹⁸

Congress may also appropriate additional disaster-recovery funding for the CDBG after a presidentially declared disaster.⁹⁹ As with other forms of federal disaster relief, the largest appropriation of these CDBG-DR funds thus far took place after the Gulf Coast hurricanes of 2005, providing \$19.85 billion in disaster-related relief to Alabama, Florida, Louisiana, Mississippi, and Texas.¹⁰⁰ For presidentially

declared disaster needs occurring in 2008, Congress appropriated \$6.8 billion in CDBG-DR funds.¹⁰¹

Unlike ordinary CDBG funds, disaster-related funds are only appropriated in “extraordinary circumstances that have resulted in significant unmet needs for long-term recovery.”¹⁰² Since they are meant to address only needs that are not met by other federal programs, the requirement is strict that CDBG-DR funds not duplicate or replace any other form of federal disaster-recovery assistance, such as that received from FEMA and the SBA.¹⁰³

To determine the extent of the unmet need and to decide how to allocate CDBG-DR funds, HUD relies on damage estimates created by FEMA and the SBA.¹⁰⁴ It then takes into account insurance proceeds, FEMA grants, and SBA loans in estimating needs not addressed by these sources.¹⁰⁵ HUD will then publish a notice in the *Federal Register* regarding allocations and requirements for application submissions.¹⁰⁶ States and local governments must apply to HUD for CDBG-DR funding by submitting an action plan that describes the needs, strategies, and projected uses of CDBG-DR funds.¹⁰⁷

As mentioned above, one of the hallmarks of the CDBG-DR program is the flexibility afforded to states and local communities in determining what activities to fund. This includes funding activities that focus on long-term recovery, as well as the restoration of infrastructure, housing, and revitalizing the economy.¹⁰⁸ This does not mean that there are no restrictions. First, CDBG-DR funds are restricted by the same statutory requirements that are applicable to CDBG funds.¹⁰⁹ This includes the requirement that CDBG allocations be used primarily to benefit low- and moderate-income residents.¹¹⁰ However, while CDBG requires that at least 70 percent of the grant be used to benefit low- and moderate-income people, this requirement is often modified for CDBG-DR funding, reducing the threshold to as low as 50 percent.¹¹¹ A further restriction applicable to CDBG-DR is that funds be used solely to meet expenses related to a past disaster.¹¹² This means that measures purely focused on preventing or mitigating damage from future disasters cannot be funded through CDBG-DR, although they can be incorporated into rebuilding efforts that are eligible for CDBG-DR.¹¹³

Nonetheless, because it is not always possible at the time that funds are appropriated to determine exactly how much funding will be needed to meet recovery efforts, Congress usually grants HUD significant discretion to waive, suspend, or issue alternative requirements.¹¹⁴ This includes waivers of the income threshold requirements and of statutory restrictions on the types of activities that may be funded.¹¹⁵ The only requirements that can never be waived are the requirements of nondiscrimination, environmental review, labor standards, and fair housing, and that the funds be used to meet expenses related to a past disaster.¹¹⁶

However, it is argued that this broad waiver authority is subject to abuse and can end up hurting the low- and moderate-income individuals that it is supposed to assist.¹¹⁷ For example, after Hurricane Katrina, the State of Mississippi received waivers from HUD that exempted over 80 percent of its CDBG-DR funds from

the requirement that funds benefit low- to moderate-income individuals.¹¹⁸ In fact, the State of Mississippi requested a blanket waiver of income requirements for *all* CDBG-DR funds; although HUD did not authorize the blanket waiver, it did incrementally authorize the waivers as the state submitted updates to its action plans, creating almost the same result.¹¹⁹

The diversion of funds that were initially slated for housing assistance into economic development is another example of how low- and moderate-income individuals were affected by waivers.¹²⁰ About \$600 million in funds that would have been used to directly meet the dire housing needs of low- to moderate-income individuals after Hurricane Katrina were diverted to long-term recovery plans. This left the most vulnerable section of the community with few options and added to the already bleak housing crisis that existed in the state.¹²¹ Additionally, this diversion may also have indirectly, and unintentionally, violated the CDBG-DR's unwaivable nondiscrimination requirement because it resulted in a denial of fair and affordable housing to minorities.¹²²

A further criticism is the interpretation of what constitutes benefiting low- to moderate-income citizens. For example, the State of Mississippi's use of CDBG-DR funds to repair and greatly expand the Port of Gulfport as part of its economic development plan has been criticized for failing to meet this requirement.¹²³ Although expansion of the port is calculated to create jobs, it is estimated that only 10 percent of new jobs created will be available to low- and moderate-income individuals, which is way below the 50 percent requirement.¹²⁴

III. State Assistance

There are two types of disaster assistance provided by states. One form of assistance is provided directly from state funds, and this assistance can be either ad hoc or can exist as established state agencies and programs set up to meet a future disaster, although these are not necessarily geared specifically for small businesses. The other form of assistance comes from state administration and distribution of federal disaster funds. This section will focus on the state of Florida as an example of one state that has an established small-business disaster-assistance program. (For an example of a state program that administers federal disaster funds, see chapter 9.)

The primary form of state disaster assistance for small businesses in Florida is the Small Business Emergency Bridge Loan Program. The program can be activated by the governor after making a declaration of a state of emergency.¹²⁵ The program was first activated after Hurricane Andrew devastated southern Florida in 1992. According to the program website, "it has been activated 13 more times following disasters and has resulted in assistance for more than 950 small businesses in 56 counties, consisting of more than \$27 million in assistance."¹²⁶

The Small Business Emergency Bridge Loan Program provides short-term, zero percent interest loans to small businesses that are damaged by a disaster.¹²⁷ These loans can serve as a cash flow between the time of the disaster and the time

that the business can secure financial resources, such as insurance, SBA disaster loan proceeds, or regular profits.¹²⁸ These loans are meant to be truly at no cost to the borrower. For example, at closing, the cost of documentary stamps is paid directly from the loan fund.¹²⁹ Florida's Small Business Development Center (SBDC) Network, with offices throughout the state, can assist business owners with the application process.

Florida is one of the few states that has a bridge loan program in place to keep businesses afloat until other forms of financing become available. Other states include North Carolina, Louisiana, and New York.¹³⁰ In Florida, these loans are capped at \$25,000. These loans are short term and must be repaid within 12 months.¹³¹ They are not meant to be a primary source of funding for small businesses in the aftermath of a disaster, tying eligibility to the pursuit of other sources.¹³² To be eligible for a bridge loan, a business must be located within the designated emergency disaster area and have two to 100 employees.¹³³ Loan proceeds can only be used to maintain or restart a business in the designated area.¹³⁴

The state of Florida also created a special program to address the economic and environmental difficulties produced by the 2010 oil spill in the Gulf of Mexico,¹³⁵ which affected fishing, tourism, and related industries primarily in several counties of northwest Florida.¹³⁶ The Oil Spill Recovery Act,¹³⁷ enacted unanimously by the Florida Senate in 2011, consists of two separate funding sources for businesses.¹³⁸ Under either source of funding, waivers of job and wage eligibility requirements are available to businesses applying for incentives under several of Florida's economic development projects.¹³⁹

One section of the Oil Spill Recovery Act provides that funds received by the state of Florida from private or government sources as a consequence of the 2010 Gulf oil spill in the form of fines or compensation must be preferentially distributed to eight counties deemed to be disproportionately affected by the 2010 oil spill.¹⁴⁰ Specifically, the act requires that 75 percent of all such funds be expended in these counties for research on the impact of the spill, environmental restoration, economic incentives, and strategies to expand and diversify the economies of the eight named counties.¹⁴¹ The remaining 25 percent is to be used in any other county affected by the oil spill.

Additionally, the act appropriates \$10 million a year for three years to be distributed to businesses in the form of the Industry Recruitment, Retention and Expansion Fund (IRREF) Grant Program.¹⁴² The purpose of the program is to develop and implement "an innovative economic development program for promoting research and development, commercialization of research, economic diversification, and job creation" in the eight disproportionately affected counties.¹⁴³ Therefore, businesses applying for the grant must be able to prove that they can create "net new, sustainable, private-sector job opportunities" in the specified counties.¹⁴⁴ The IRREF Grant Program is meant to supplement and not substitute local and state incentives, and, therefore, an application will not be considered until all other forms of local and state economic development incentives have been proposed or denied. In other

words, the program is meant to be more of a “closing fund” that is used as “a final incentive to seal the deal.”¹⁴⁵

The IRREF Grant Program gives preferential treatment to medium and large businesses and to those in one of Florida’s targeted industry clusters¹⁴⁶ or strategic areas of interest.¹⁴⁷ To be eligible, a business must be considering locating or expanding in one of the eight disproportionately affected counties, and one for which there is significant interstate or international competition.¹⁴⁸ Additionally, businesses are required to commit to funding at least 75 percent of the project using sources other than Florida taxpayers.¹⁴⁹ Priority is given to projects located in communities with expedited permitting processes.¹⁵⁰ Grantees are required to locate their business within one of the disproportionately affected counties, and create 10 to 30 new, private-sector jobs, each of which must be sustained for at least three years.¹⁵¹ The new jobs must pay at least 85 percent of the average wage prevailing in the location and must generate at least 51 percent of revenues outside of Florida.¹⁵²

The IRREF Grant Program got off to a slow start. Although applications began to be accepted on October 11, 2011, the original deadline for the first disbursement had to be extended from July 1, 2012, to September 30, 2012, so that the funds would not be lost.¹⁵³ In August 2012, two businesses were finally funded through the IRREF Grant Program: Navy Federal Credit Union and iSirona, a medical software company.¹⁵⁴ Marjam Supply Company, a seller and distributor of building materials in 12 eastern states, was awarded a grant in December 2012.¹⁵⁵ Other eligible projects are currently being considered, but no other awards have been announced.¹⁵⁶

IV. Conclusion

If a small business is going to recover after a disaster strikes, it must move quickly to assess and repair any damage. Failure to do so can be critical in determining whether the business can reopen and continue to operate. Nonetheless, a small business should not wait for a disaster to strike to begin preparations. Every small business should have a disaster-preparedness plan in place so that when a disaster hits it has procedures to address damage caused by the disaster. There are many resources available from the SBA, state disaster-response agencies, and nonprofit organizations to help businesses create a plan to meet future disasters.¹⁵⁷ Disaster preparedness also includes the appropriate level and type of insurance and, if financially feasible, business continuity insurance.

Even after taking all of these precautions, however, a small business may have insufficient resources to recover and become profitable after a disaster. Small businesses in general face unique problems, such as reduced access to loans, limited cash reserves, and more difficulty withstanding hard economic times. These same small businesses are called by President Obama “the backbone of our economy and the cornerstones of our communities.”¹⁵⁸ When a disaster hits, it is therefore critical that these businesses bounce back quickly because their economic recovery leads to

the economic recovery of the community. The programs described in this chapter are providing some assistance to businesses after a disaster. However, as discussed, there have been problems with all of these programs, which must be addressed and corrected if businesses are to recover expeditiously.

Notes

1. *What Is SBA's definition of a small business concern?* U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/what-sbas-definition-small-business-concern> (last visited Sept. 9, 2012). Beyond this, the SBA has size standards (defined by either the number of employees or annual sales receipts) for each industry. See U.S. SMALL BUS. ADMIN., TABLE OF SMALL BUSINESS SIZE STANDARDS MATCHED TO NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODES (2012), available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.
2. IMPACT ON U.S. SMALL BUSINESS OF NATURAL & MAN-MADE DISASTERS 4 (Hewlett Packard, 2007), available at <http://www.edwardsinformation.com/content/ImpactofDisaster.pdf>.
3. *Business Needs*, FLA. SMALL BUS. DEVL. CTR., <http://www.sbdctampabay.com/resources/business-needs/disaster-relief-planning/#> (last visited Sept. 7, 2012); INST. FOR BUS. & HOME SAFETY, OPEN FOR BUSINESS, "Message from Diana McClure, Vice President and Director of Business Protection, Institute for Business & Home Safety," available at http://ofb.ibhs.org/content/data/file/OpenForBusiness_new.pdf.
4. NFIB NATIONAL SMALL BUSINESS POLL: DISASTERS 2 (William J. Dennis, Jr., vol. 4, issue 5 2004), available at [http://www.411sbfacts.com/files/disastersFINAL\[1\].pdf](http://www.411sbfacts.com/files/disastersFINAL[1].pdf).
5. *Id.* at 3–5.
6. Seventeen percent of businesses report uninsured physical damage as their main problem after a disaster, and 12 percent report being underinsured. *Id.* at 3, 4.
7. *Id.* at 4.
8. *Id.*
9. A full 47 percent of businesses report not being insured for the loss of business. *Id.*
10. I.R.S. Pub. 2194, Disaster Resource Guide for Individuals and Businesses, at 9 (2012), available at <http://www.irs.gov/pub/irs-pdf/p2194.pdf>.
11. 42 U.S.C. § 5170 (2012).
12. Memorandum from Small Bus. Comm. Staff to Comm. on Small Bus. Members, 2 (Nov. 28, 2011) [hereinafter Memo], available at http://smallbusiness.house.gov/uploadedfiles/11-30_hearing_Memo.pdf.
13. Disaster assistance information can be located on the Disaster Assistance Portal at <http://www.disasterassistance.gov>.
14. FEMA only provides grants to individuals who qualify. If a business is not incorporated and is one that is run by a sole proprietor such that the owner files business income tax forms as Schedule C of Form 1040, it is possible that some grants from FEMA may be available to that business owner *in his/her individual capacity* and not as part of the business. Nonetheless, such assistance, by helping the owner recover personally from the disaster, can also help the business to recover.
15. BRUCE R. LINDSEY, CONG. RESEARCH SERV., R41309, THE SBA DISASTER LOAN PROGRAM: OVERVIEW AND POSSIBLE ISSUES FOR CONGRESS 16 (2010), available at http://assets.opencrs.com/rpts/R41309_20100629.pdf.
16. Memo, *supra* note 12, at 1.
17. *Id.*
18. This means that the SBA itself reviews, processes, closes, and services the loans. *Id.* at 3.
19. *Id.*
20. Robb Mandelbaum, *Do Romney's Budget Pledges Threaten S.B.A. Loans?*, N.Y. TIMES (Sept. 13, 2012), <http://boss.blogs.nytimes.com/2012/09/13/do-romneys-budget-pledges-threaten-s-b-a-loans/>.
21. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-409, SBA DISASTER LOAN PROGRAM: ACCOUNTING ANOMALIES RESOLVED BUT ADDITIONAL STEPS WOULD IMPROVE LONG-TERM RELIABILITY OF COST ESTIMATES 5–6 (2005), available at <http://www.gao.gov/assets/250/245994.pdf>.
22. Memo, *supra* note 12, at 4.
23. LINDSEY, *supra* note 15, at 4.
24. Memo, *supra* note 12, at 2.
25. 13 C.F.R. § 123.2 (2011).
26. *Id.*
27. See text accompanying *supra* notes 10–11.

28. LINDSEY, *supra* note 15, at 4–5.
29. *Id.* at 5.
30. *Id.*
31. Jim Suhr, *U.S. Drought 2012: Half of Nation's Counties Now Considered Disaster Areas*, HUFFINGTON POST (Aug. 1, 2012), http://www.huffingtonpost.com/2012/08/02/us-drought-2012-disaster-areas_n_1731393.html (last visited Sept. 9, 2012).
32. *Drought Disaster Assistance*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/2012-drought-disaster-assistance> (last visited Jan. 23, 2013). Farms and ranches, however, were not eligible for these loans. *Id.*
33. *Id.* at 4. Providing a definition of what is considered a small business for the purpose of qualifying for federal government programs is beyond the scope of this chapter. This is because there is not one definition for a small business, but rather a set of standards that vary by industry. See U.S. SMALL BUS. ADMIN., *supra* note 1.
34. LINDSEY, *supra* note 15, at 3; *Business Physical Disaster Loan*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/physical-disaster-loans> (last visited Sept. 7, 2012).
35. *Id.* at 34.
36. *Id.* These conditions include not having credit available elsewhere, suffering uninsured damage affecting 40 percent or more of the value of the property, and the intent to repair the damage.
37. *Id.*
38. LINDSEY, *supra* note 15, at 3. However, what is considered a small business by the SBA varies from industry to industry. *Id.* These loans are also available to small agricultural cooperatives and certain private, nonprofit organizations of all sizes provided they have suffered substantial economic injury as a result of a physical disaster or an agricultural production disaster designated by the secretary of agriculture. *Economic Injury Loans*, U.S. SMALL BUS. ADMIN., <http://archive.sba.gov/services/disasterassistance/businessesofallsizes/economicinjuryloans/index.html> (last visited Aug. 27, 2012).
39. 13 C.F.R. § 123.300(1) (2011).
40. 13 C.F.R. § 123.300(2) (2011).
41. *Economic Injury Loans*, *supra* note 38.
42. *Id.*
43. *Business Physical Disaster Loan*, *supra* note 34.
44. *Economic Injury Loans*, *supra* note 38.
45. Memo, *supra* note 12, at 4; *Business Physical Disaster Loan*, *supra* note 34.
46. *Business Physical Disaster Loan*, *supra* note 34.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Apply for a Disaster Loan*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/applying-disaster-loan> (last visited Sept. 10, 2012).
51. *Disaster Loan Application*, U.S. SMALL BUS. ADMIN., <https://disasterloan.sba.gov> (last visited Sept. 10, 2012).
52. The business must submit a completed loan application and an IRS form 8821, giving permission to the IRS to provide the SBA with the business's tax return information. Additionally, the SBA will require a personal financial statement, a profit-and-loss statement, a balance sheet, and a list of debts. The SBA also requires a financial statement for each owner, partner, officer, director, and stockholder who has 20 percent or more ownership in the business. *Business Physical Disaster Loan*, *supra* note 34.
53. Memo, *supra* note 12, at 5. The SBA strongly encourages businesses to apply early and not miss the filing deadline by waiting for an insurance settlement. The final insurance information can be added when a settlement for the disaster loan has been made. The business will simply be required to apply any insurance proceeds that duplicate SBA's disaster loan to the SBA loan. *Business Physical Disaster Loan*, *supra* note 34.
54. Memo, *supra* note 12, at 5.
55. *Id.*
56. *California Fire During a Period of Civil Unrest (DR-942)*, FEMA, <http://www.fema.gov/disaster/942> (last visited Mar. 10, 2013) (stating "incident period: Wednesday, April 29, 1992 to Thursday, May 28, 1992; Major Disaster Declaration declared on May 2, 1992"); see also Editorial, *Disaster by Any Other Name: Congress Must Probe FEMA's L.A. Failure, Too*, L.A. TIMES (Jan. 13, 1993), http://articles.latimes.com/1993-01-13/local/me-1098_1_natural-disasters/. As mentioned, riots and civil disorder can trigger a declaration of disaster for the purposes of making SBA disaster loans available to businesses in a designated geographic area. See 13 C.F.R. § 123.2, *supra* note 25, and accompanying text.

57. Jake Doherty, *Korean-Americans Lack Riot Assistance*, L.A. TIMES (Dec. 27, 1992), http://articles.latimes.com/1992-12-27/news/ci-5186_1_korean-american-merchants.
58. *Id.* For more information about the Mid-Wilshire Center's activities to support small-business development more than 20 years following the riots, visit <http://www.wilshirecenter.com>.
59. *After L.A. Riots, Merchant Makes Miraculous Return, Vows Another*, SEATTLE TIMES (Dec. 24, 1992), <http://community.seattletimes.nwsourc.com/archive/?date=19921224&slug=1531741>.
60. *Id.*
61. *Id.*
62. Veronique de Rugby, *Disaster Reform Waiting to Happen*, 32 REGULATION 6, 7 (2009).
63. *Id.*
64. *Id.*
65. In 2008, Congress enacted the Small Business Disaster Response and Loan Improvements Act, requiring the SBA to effect 26 distinct changes so that it could more effectively respond to disasters in the future. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-09-755, ADDITIONAL STEPS SHOULD BE TAKEN TO ADDRESS REFORMS TO THE DISASTER LOAN PROGRAM AND IMPROVE THE APPLICATION PROCESS FOR FUTURE DISASTERS 1 (2009) [hereinafter GAO-09-755], available at <http://www.gao.gov/assets/300/293117.pdf>.
66. *Id.* at 29.
67. See LINDSEY, *supra* note 15, at 4; *Disaster Assistance: Is SBA Meeting the Recovery Needs of Disaster Victims?: Hearing Before the H. Comm. on Small Business*, 112th Cong. 1, 5 (2011) (statements of Roscoe G. Bartlett, Comm. Member; and William Sheer, Director, Financial Markets and Community Investment, U.S. Government Accountability Office, Washington, D.C.), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg72209/pdf/CHRG-112hhrg72209.pdf>.
68. INT'L ECON. DEV. COUNCIL, AN IMPROVED FEDERAL RESPONSE TO POST-DISASTER ECONOMIC RECOVERY—FINAL REPORT 8 (2010), available at www.nado.org/wp-content/uploads/2011/08/pdisasterrpt.pdf.
69. Press Release, U.S. Senate Comm. on Small Bus. & Entrepreneurship, Landrieu Leads Committee Hearing to Examine Federal Response to Small Businesses Affected by Hurricane Sandy (Dec. 13, 2012), available at http://www.sbc.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=501170b9-4cc2-4d1f-b24f-fcaa67e73e9b.
70. Jose Pagliery, *Inaction on Sandy by Congress Leaves Businesses in Limbo*, CNNMONEY (Jan. 4, 2013), <http://money.cnn.com/2013/01/04/smallbusiness/sandy-congress/>.
71. *Id.*
72. Ellen Brown, *Political Football over Disaster Relief*, HUFFINGTON POST, Jan. 5, 2013, www.huffingtonpost.com/ellen-brown/political-football-over-d_b_2405413.html.
73. *Id.*
74. Stacy Cowley, *Sandy's Small Business Victims: We Don't Want Loans!*, CNNMONEYTECH (Nov. 2, 2012), <http://money.cnn.com/2012/11/02/smallbusiness/sandy-loans/index.html>. The plight of these businesses was not necessarily due to the lack of insurance, but rather due to policy provisions that exclude coverage based on whether the disaster was classified as a hurricane or a tropical storm, or whether the damage was caused by wind or by flooding. Brown, *supra* note 72. There are some businesses that did not carry flood insurance because the insurance would have provided insufficient coverage. For example, one business was offered a maximum of \$500,000 insurance coverage on its \$4 million equipment, and this was at exorbitant premiums. Cowley, *supra*.
75. GAO-09-755, *supra* note 65, at 31.
76. INT'L ECON. DEV. COUNCIL, *supra* note 68, at 8.
77. *Id.*
78. *Id.*
79. *Id.* at 7.
80. I.R.S. Pub. 2194, *supra* note 10.
81. The phone number for the IRS Disaster Assistance Hotline is 1-866-562-5227.
82. *Topic 515*, IRS, <http://www.irs.gov/taxtopics/tc515.html> (last visited Aug. 29, 2012).
83. *Id.* If a business has insurance that does not cover the entire loss, the loss not covered by insurance can be deducted as a casualty loss. *Id.* To determine the amount of the casualty loss, a business can use Publication 584-B. Business casualty losses are reported on Form 4684 Section B.
84. *Id.*; I.R.S. Pub. 2194, *supra* note 10, at 2, 9. While claiming a loss on an original or amended return for the prior year may get the taxpayer an earlier refund, it may be that claiming the loss on the current year return could result in a greater tax saving. The business should obtain tax advice on these

matters. Form 1140X is required to file an amended individual tax return (for unincorporated sole proprietors that file Schedule C with their Form 1040). To file an amended corporate return, use Form 1120X. For an S Corporation, use Form 1120-S, and check box H (4) on page 1 to indicate that the return is amended.

85. *Disaster Assistance Self-Study – Payments/Benefits and Tax Returns*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Disaster-Assistance-Self-Study---Payments-Benefits-and-Tax-Returns> (last visited Dec. 5, 2012). For an example of a disaster-specific tax relief, see Patrick E. Tolan, *The Flurry of Tax Law Changes Following the 2005 Hurricanes: A Strategy for More Predictable and Equitable Tax Treatment of Victims*, 72 BROOK. L. REV. 799 (2007) (discussing tax relief after the Gulf hurricanes of 2005).

86. The relief available to taxpayers for each disaster is set forth by the National Disaster Assistance Coordinator in a Disaster Relief Guideline Memorandum.

87. I.R.S. Pub. 2194, *supra* note 10.

88. *Disaster Assistance Self-Study – Payments/Benefits and Tax Returns*, *supra* note 85. Form 4506 is required for copies of tax returns and Form 4506-T for copies of tax transcripts. The name of the disaster should be written in **red ink** at the top of the form before submitting. I.R.S. Pub. 2194, *supra* note 10, at 6.

89. Tolan, *supra* note 85, at 837.

90. *Id.* at 841–42.

91. *Id.* at 841.

92. *Id.* at 837, 843.

93. *Id.*

94. *Community Development Block Grant Program – CDBG*, HUD, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited Dec. 2, 2012).

95. EUGENE BOYD, CONG. RESEARCH SERV., RL33330, COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS IN DISASTER RELIEF AND RECOVERY 1 (2011), available at <http://www.fas.org/sgp/crs/misc/RL33330.pdf>.

96. *Community Development Block Grant Program – CDBG*, *supra* note 94. The formula is based on community need, using measures such as the degree of poverty, size of the population, extent of housing overcrowding, age of housing, and population growth lag as compared to other metropolitan areas. *Id.*

97. BOYD, *supra* note 95, at 1. These eligible activities include economic development and job creation, which can include aid to for-profit organizations and creation of loans; public service programs, such as job counseling and training; aid to not-for-profit organizations, which include community-development corporations and faith-based organizations; purchasing, demolishing, and disposing of real property; housing assistance, including loans and grants for rehabilitation; and historic preservation. *Id.*

98. Mary Beth Johnson Pavlik, *A Look at the Recovery Act and Its Effect on the Community Development Block Grant Entitlement Program*, 62 ADMIN. L. REV. 523, 526–27 (2010).

99. Community Development Block Grant Disaster Recovery (CDBG-DR) for 2011 Disasters Frequently Asked Questions (FAQs), at 1, available at http://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_dr_faq.pdf [hereinafter FAQs].

100. BOYD, *supra* note 95, at *Summary*.

101. *Id.*

102. FAQs, *supra* note 99, at 3.

103. *Id.* at 2.

104. *Id.*

105. *Id.*

106. *Id.* at 3.

107. *Community Development Block Grant Program – CDBG*, *supra* note 94.

108. FAQs, *supra* note 99, at 3; U.S. Dep't of Housing & Urb. Dev., CDBG Disaster Recovery Overview, at 12, available at http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG_DR_Overview.pdf.

109. FAQs, *supra* note 99, at 3.

110. BOYD, *supra* note 95, at 4.

111. *Id.* This can be met in one of two ways: either all or a majority of people who benefit from the funded activity have low or moderate incomes *or* the funded activity takes place in an area in which at least the required percent of the population are of low or moderate income. MANAGING CDBG: A GUIDEBOOK FOR ENTITLEMENT GRANTEEES ON SUBRECIPIENT OVERSIGHT, app. 1-14–1-16, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf (last visited Dec. 3, 2012).

112. See CDBG Disaster Recovery Overview, *supra* note 108, at 12, 17, 20–22.

113. *Id.*; FAQs, *supra* note 99, at 3. CDBG-DR funds also have geographic spending restrictions. See FAQs, *supra* note 99, at 2, 3.

114. Phylliss Craig-Taylor, *All that Glitters is Not Gold: A Critique of Waivers and Congressional Mandates on Community Block Grants*, 2 CHARLOTTE L. REV. 145, 154 (2010); BOYD, *supra* note 95, at 4; FAQs, *supra* note 99, at 3.

115. BOYD, *supra* note 95, at 4.

116. *Id.*; CDBG Disaster Recovery Overview, *supra* note 108, at 29.

117. Craig-Taylor, *supra* note 114, at 148.

118. *Id.* at 151.

119. Simon Maloy, *Media Ignored Mississippi's Use of Waivers to Redirect Funds Designated for Low-Income Katrina Victims*, MEDIA MATTERS FOR AM. (Aug. 30, 2007), <http://mediamatters.org/research/2007/08/30/media-ignored-mississippi-use-of-waivers-to-re/139727>.

120. Craig-Taylor, *supra* note 114, at 158.

121. *Id.* at 151–52, 156.

122. *Id.* at 180–83.

123. *Id.* at 148, 156–62.

124. *Id.* at 156–58.

125. This is indirectly authorized by Florida Statute section 252.37(2), which permits the governor to direct that funding be made available as needed in a disaster that has been declared a state of emergency.

126. *Bridge Loan Application*, FLA. SMALL BUS. EMERGENCY BRIDGE LOAN PROGRAM, <http://www.floridadisasterloan.org/application.html> (last visited Sept. 6, 2012).

127. The SBDC Network State Office can be contacted at (850) 473-7800 or toll-free at 1-866-737-7232. Information about the SBDC can be found at <http://floridasbdc.org/main.php#> (last visited Sept. 6, 2012).

128. *Frequently Asked Questions*, FLA. SMALL BUS. EMERGENCY BRIDGE LOAN PROGRAM, http://www.floridadisasterloan.org/frequently_asked_questions.html (last visited Sept. 10, 2012).

129. *Id.* Applications are available online at <http://www.floridadisasterloan.org/application.html>.

130. INT'L ECON. DEV. COUNCIL, *supra* note 68, at 8. North Carolina Emergency Bridge Loans of up to \$10,000 are available to businesses awaiting SBA approval to be repaid from the first SBA disbursement. North Carolina's Business Disaster Assistance Program also provides loans to businesses unable to secure SBA loans or, alternatively, gives businesses rebates for three years on interest they pay on their SBA Disaster Loans. OFFICE OF THE GOV., NORTH CAROLINA DISASTER RECOVERY GUIDE 30–31, available at <http://www.osbm.state.nc.us/disaster/DisasterRecoveryGuide.pdf>. Louisiana developed an emergency bridge loan program to help businesses affected by hurricanes; New York developed a combination of business grants and short-term loans post-9/11. INT'L ECON. DEV. COUNCIL, *supra* note 68, at 8. Unlike the Florida and North Carolina programs, however, which are funded from state appropriations, the programs in Louisiana and New York were funded through CDBG grants. See Press Release, Disaster Recovery Unit, (La.) Office Cmty. Dev., \$20 Million Awarded to Nonprofits for Small Business Loans and Technical Assistance (Dec. 6, 2010), available at <http://www.doa.louisiana.gov/cdbg/DR/News%20Items/ILTAPreRelease12-10.htm> (last visited Jan. 23, 2013); TOM SEESSEL, RESPONDING TO THE 9/11 TERRORIST ATTACKS: LESSONS FROM RELIEF AND RECOVERY IN NEW YORK CITY 21, available at http://www.fordfoundation.org/pdfs/library/responding_to_attacks.pdf. New York also provided small businesses emergency loans of up to \$25,000 after Superstorm Sandy. See *Hurricane Sandy Emergency Loan Fund FAQ*, NYC SMALL BUS. SERVS., http://www.nyc.gov/html/sbs/nycbiz/downloads/pdf/home/Emergency_Loan_FAQ.pdf (last visited Jan. 23, 2013).

131. FLA. SMALL BUS. EMERGENCY BRIDGE LOAN PROGRAM, <http://www.floridadisasterloan.org/index.html> (last visited Jan. 23, 2013).

132. *Eligibility & Loan Process*, FLA. SMALL BUS. EMERGENCY BRIDGE LOAN PROGRAM, http://www.floridadisasterloan.org/eligibility_and_loan_process.html (last visited Jan. 23, 2013).

133. *Id.* However, self-employed business owners with no other employees may still qualify on other guidelines on a case-by-case basis. *Frequently Asked Questions*, *supra* note 128. Loans are made to individuals that are at least 51 percent owners in the business, and only one loan is made per individual. *Id.* Therefore, a person who owns two separate businesses can only qualify for a bridge loan for one business. *Id.*

134. *Eligibility & Loan Process*, *supra* note 132. However, loans will be approved on a case-by-case basis to pay off debts already incurred to maintain or restart the business. *Id.*

135. On April 20, 2010, the Deepwater Horizon oil rig operated by BP exploded, causing a gush of oil that was not capped until July 2010. *Gulf Oil Spill Timeline and the Ensuing Legal Cases Against BP*,

ASSOCIATED PRESS, Nov. 15, 2012, available at http://www.huffingtonpost.com/2012/11/15/gulf-oil-spill-timeline_n_2139515.html?utm_hp_ref=bp-oil-spill. The millions of barrels of oil that spilled into the Gulf of Mexico affected coastal communities in the states of Louisiana, Mississippi, Alabama, and Florida. Damage to Texas was mostly economic rather than environmental. Press Release, Mary Landrieu, *Shelby Lead Bipartisan Introduction of Bill to Restore Gulf Coast* (July 21, 2011), www.landrieu.senate.gov/?p=press-release&id=%201134 [hereinafter Landrieu].

136. Landrieu, *supra* note 135. State Senator Don Gaetz stated, “[S]ales and bed tax receipts were down by 40 percent or more in parts of our area and down by nearly a third overall in the seven coastal counties of Northwest Florida.” Press Release, Senator Don Gaetz, *Oil Spill Recovery Act on Fast Track in Senate* (Jan. 11, 2011), available at <http://www.flsenate.gov/Media/PressRelease/Show/1329>.

137. 2011 Fla. Laws ch. 2011-142 §§ 497–99, available at laws.flrules.org/files/Ch_2011-142.pdf.

138. Lauren Sage Reinlie, *Florida Senate OKs Oil Spill Recovery Bill*, NW. FL. DAILY NEWS, Mar. 17, 2011, State and Regional News.

139. 2011 Fla. Laws ch. 2011-142 § 497. These waivers are available through the Department of Economic Opportunity and require notice to the governor for incentives of up to \$5 million. For incentives between \$5 million and \$10 million, the governor, the president of the Senate, and the Speaker of the House must be notified, and the Senate president and the Speaker must concur within five days of the notice. No waivers are permitted for incentives above \$10 million. *Id.*

140. The eight counties are Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla. 2011 Fla. Laws ch. 2011-142 § 499(1).

141. *Id.* at § 499(3).

142. The IRREF Grant Program is administered by the University of West Florida’s Office of Economic Development and Engagement. Information on the program can be located at <http://uwf.edu/oede/initiative.cfm>.

143. 2011 Fla. Laws ch. 2011-142 § 498.

144. REQUEST FOR PARTICIPATION, FISCAL YEAR 2012–2013, NORTHWEST FLORIDA REGIONAL ECONOMIC DEVELOPMENT INITIATIVE: INDUSTRY RECRUITMENT, RETENTION & EXPANSION FUND GRANT PROGRAM 4 (2012), available at <http://uwf.edu/oede/RFP/IRREF.pdf>.

145. *Oil-Impacted Counties Looking at \$10 Million in Development Funds*, PENSACOLA NEWS J. (Aug. 8, 2011), http://uwf.edu/oede/news/OEDE_Aug8_2011.pdf.

146. *SEDI Frequently Asked Questions*, UNIV. OF WEST FLA., http://uwf.edu/oede/REDI_faqs.cfm (last visited Jan. 23, 2013). A targeted industry cluster is defined by Enterprise Florida Inc. as clean technology, life sciences, information technology, aviation/aerospace, logistics and distribution, defense and homeland security, and financial and professional services. *Florida Industry Clusters*, ENTER. FLA., <http://www.eflorida.com/contentsubpagefull.aspx?id=52> (last visited Jan. 22, 2013).

147. Florida’s strategic areas of emphasis are defined by Enterprise Florida Inc. as manufacturing, corporate headquarters, and emerging technologies. *Id.*

148. REQUEST FOR PARTICIPATION, *supra* note 144, at 5.

149. *Id.*

150. *Id.* at 4.

151. OIL SPILL RECOVERY ACT: A PRIMER 6, available at http://www.naborhome.com/uploads/OSRA-IRREF_Overview_pptx.pdf; *SEDI Frequently Asked Questions*, *supra* note 146. A minimum of 10 jobs must be created if the project is located in a rural, brownfield, or enterprise zone, and a minimum of 30 if it is not located in these zones. *Id.*

152. OIL SPILL RECOVERY ACT: A PRIMER, *supra* note 151, at 6.

153. Press Release, Fla. Dep’t of Econ. Opportunity, UWF Office of Economic Development and Engagement Announces Regional Economic Development Initiative (Oct. 11, 2011), available at <http://www.floridajobs.org/news-center/news-feed/2011/10/11/uwf-office-of-economic-development-and-engagement-announces-regional-economic-development-initiative>; Carlton Proctor, *State Sen. Don Gaetz Says Use BP Oil Spill Cash or Lose It*, PENSACOLA NEWS J., July 15, 2012, Local News.

154. Jim Turner, *Navy Federal Gets First of Legislature’s Oil Spill Recovery Funds*, SUNSHINE ST. NEWS (Aug. 10, 2012), <http://www.sunshinestatenews.com/blog/navy-federal-gets-first-legislatures-oil-spill-recovery-funds> (last visited Jan. 22, 2013); *iSirona Gets Oil Spill Grant to Add 100 Jobs in Panama City*, ECON. DEV. BLOG (Aug. 30, 2012), <http://www.economicdevelopmenthq.com/blog/isirona-oil-spill-grant-panama-city-fl-jobs>.

155. *MarJam Supply Company Expanding to Santa Rosa Beach*, WTVY.COM (Dec. 3, 2012), <http://www.wtv.com/news/headlines/MarJam-Supply-Company-Expanding-to-Santa-Rosa-Beach-181927991.html>.

156. OIL SPILL RECOVERY ACT: A PRIMER, *supra* note 151, at 9.

157. For example, the SBA provides guidance for Small Businesses at Disaster Planning, <http://www.sba.gov/content/disaster-planning> (last visited Feb. 17, 2013). Businesses in Florida can go to Get a Plan! at <http://www.floridadisaster.org/business> for assistance in preparing a disaster plan. The Insurance Institute for Business and Home Safety also provides a disaster planning resource for businesses at Open for Business, <http://www.disastersafety.org/open-for-business/> (last visited Feb. 17, 2013).

158. Katelyn Sabochik, *Small Businesses Are the Backbone of Our Economy and the Cornerstones of Our Communities*, WHITE HOUSE BLOG, <http://www.whitehouse.gov/blog/2010/08/17/small-businesses-are-backbone-our-economy-and-cornerstones-our-communities> (August 17, 2010, 06:02 AM EST).