



# SBA Policy Notice

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**TO:** All SBA Employees

**CONTROL NO.:** 5000-1193

**SUBJECT:**

**EFFECTIVE:** 1/26/2011

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On September 27, 2010, President Obama signed the Small Business Jobs Act of 2010 (the “Small Business Jobs Act”) (Pub. L. 111-240). The Small Business Jobs Act made significant changes to the Export Working Capital Program (EWCP) and the International Trade Loan Program (ITL), including raising the maximum loan amount for EWCP and ITL to \$5 million and increasing the maximum SBA guaranty percentage for ITL to 90%. SBA Information Notice 5000-1182 (effective October 25, 2010) detailed the changes made in the maximum guaranty and maximum loan amounts for the EWCP and ITL programs. In addition, the Small Business Jobs Act made numerous other changes to the EWCP and ITL programs, as discussed below.

## **Export Working Capital Program**

1. Lenders that are participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (Ex-Im Bank) (or any successor Program) are now eligible to participate in the PLP-EWCP program. The application procedure to become an SBA 7(a) Lender is described in SOP 50 10 5(C), Subpart A, Chapter 1, Paragraph II. Lenders should be aware they must comply with 13 CFR § 120.410(d), which requires SBA lenders to “be supervised and examined by either a Federal Financial Institution Regulator or a state banking regulator satisfactory to SBA.” SOP 50 10 5(C), Subpart A, Chapter 1, Paragraph IV.B.5 describes how Lenders may apply for PLP-EWCP authority. Ex-Im Bank Delegated Authority Lenders must comply with the PLP-EWCP application procedures as described in SOP 50 10 5(C), however, Ex-Im Bank Delegated Authority Lenders are not required to have prior experience with SBA 7(a) lending and are deemed to be an active participant with Ex-Im Bank for purposes of the application.
2. SBA charges lenders a yearly fee on all 7(a) loans known as the Ongoing Servicing Fee (currently 0.55%), which is payable monthly through SBA’s Fiscal and Transfer Agent (currently Colson Services Corporation). The Small Business Jobs Act provides that for EWCP loans only, the Ongoing Servicing Fee shall not be collected more frequently than once per year and no fee shall be assessed on capital that is not accessed by the small business concern. Guidance concerning the payment and collection of this fee for EWCP loans will be issued in a subsequent Notice.

## **International Trade Loan Program**

1. Previously, refinancing of debt that is not structured with reasonable terms and conditions was an authorized use of proceeds for ITL loans. However, ITL refinancing was limited to existing indebtedness incurred to finance the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade. ITL loan proceeds may now be used for the refinancing of any debt that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under the 7(a) loan program. The requirements for debt refinancing under the 7(a) loan program are described in SOP 50 10 5(C), Subpart B, Chapter 2, Paragraph IV.E.

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2. Working capital is now an allowable use of proceeds for an ITL loan. However, the maximum SBA guaranty amount for any working capital component of an ITL loan is limited to \$4,000,000. (The total maximum SBA guaranty amount for an ITL loan is \$4,500,000.) Additionally, to the extent that the borrower has a separate EWCP loan or any other 7(a) loan for working capital, the SBA guaranty amount for those loans is counted against the \$4,000,000 guaranty limit for working capital for the ITL loan.
3. The lender is required to take a first lien on the assets purchased with ITL loan proceeds or other assets of the small business concern. The Small Business Jobs Act provides for an exception to this requirement. An ITL loan can be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the SBA determines that the second lien provides adequate assurance of payment of the loan. For example, when the ITL loan is to improve business real estate (such as adding an addition to an existing building) or for equipment, and the collateral securing the ITL loan is subject to a first lien securing an existing loan used to acquire the business real estate or equipment, the ITL loan may be in a second lien position if (1) the loan in the first lien position was not made at or about the same time as the ITL loan and (2) the lender's analysis identifies how the risk of a second lien position on the ITL loan is offset by other factors. An example of an acceptable analysis would be that other collateral has been taken to secure the ITL loan that in liquidation would pay the ITL loan in full. Another acceptable analysis would discuss the length of time the business has been operating profitably and repaying its existing obligations in a timely manner and demonstrate that the borrower's cash flow is sufficient to repay all of the borrower's debt, including the ITL loan. Clear justification must exist when the interest rate for the first lien loan is significantly higher than the ITL loan and/or the maturity of the first lien loan is significantly shorter than the ITL loan. (Refer to SOP 50 10 5(C), Subpart A, Chapter 1, Paragraph II.E.5. regarding "piggyback" loans which are not eligible.)

ITL loans may not be processed under the Preferred Lenders Program (PLP) when the ITL loan will not have a first lien on the assets being financed.

Questions concerning this notice should be directed to Richard Schulze at [richard.schulze@sba.gov](mailto:richard.schulze@sba.gov) or 817-310-3749 or Patrick Hayes at [patrick.hayes@sba.gov](mailto:patrick.hayes@sba.gov) or 216-522-4731.

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