



## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 120**

### **RIN 3245-AG95**

### **Export Express, Export Working Capital, and International Trade Loan Programs**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is seeking comments on potential changes to the regulations governing its Export Loan Programs (the Export Express, Export Working Capital, and International Trade Loan Programs). SBA is soliciting comments on how the Agency can improve the products, procedures, forms, and reporting requirements of the Export Loan Programs. Feedback will be used to modernize the Export Loan Programs, increase lender participation and usage, ensure that U.S. small businesses can finance their international sales, and increase U.S. small business exports.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG95 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail/Hand Delivery/Courier: David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street, S.W., 2<sup>nd</sup> Floor, Washington, D.C. 20416.

All comments will be posted on <https://www.regulations.gov>. If you wish to submit Confidential Business Information (CBI) as defined in the User Notice at <https://www.regulations.gov>, you must submit such information either by mail to David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street S.W., 2<sup>nd</sup> Floor, Washington, D.C. 20416, or by email to [David.Vidal@sba.gov](mailto:David.Vidal@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

**FOR FURTHER INFORMATION CONTACT:** David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street S.W., 2<sup>nd</sup> Floor, Washington, D.C. 20416; (202) 205-7119 or [David.Vidal@sba.gov](mailto:David.Vidal@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SBA 7(a) Loan Program includes three financing options for U.S. small business exporters, or businesses adversely affected by import competition: the Export Express Program, the Export Working Capital Program, and the International Trade Loan Program. The purpose of these programs is to provide access to capital for U.S. small business concerns to support expansion into international markets and the growth of U.S. small business exports. Details on the features and requirements of each program are described below.

*A. Export Express Program*

Established as a pilot program in 1998, the Export Express Program (Export Express) was made permanent by the Small Business Jobs Act of 2010 (Pub. L. 111-

240). The statutory provisions for Export Express are in Section 7(a)(34) of the Small Business Act, as amended (15 U.S.C. 636(a)(34)). SBA's Standard Operating Procedures 50 10 5(K), Lender and Development Company Loan Programs, and 50 57 2, 7(a) Loan Servicing and Liquidation (SOPs), as amended, describe in detail the policies and procedures governing Export Express. On September 28, 2018, SBA published a Proposed Rule regarding, in part, Export Express (83 FR 49001). The original comment period for the Proposed Rule was scheduled to end on November 27, 2018 but was extended to December 18, 2018 (83 FR 57693). A Final Rule is under development.

The maximum loan amount for an Export Express loan is \$500,000. The maximum SBA guaranty on an Export Express loan of \$350,000 or less is 90 percent, and for an Export Express loan over \$350,000 and up to \$500,000, the maximum guaranty is 75 percent. Under Export Express, designated lenders (Export Express Lenders) are permitted to use, to the maximum extent practicable, their own analyses, procedures, and documentation in making, closing, servicing, and liquidating Export Express loans. They also have reduced requirements for submitting documentation to SBA and obtaining the SBA's prior approval. These loan analyses, procedures, and documentation must meet prudent lending standards; be consistent with those the Export Express Lender uses for its similarly sized, non-SBA guaranteed commercial loans; and conform to all requirements imposed upon 7(a) Lenders generally and Export Express Lenders in particular by Loan Program Requirements (as defined in 13 CFR 120.10), as such requirements are issued and revised by SBA from time to time. As with all 7(a) loans, the Export Express Lender must demonstrate that credit is not available elsewhere to the applicant on reasonable terms from non-federal, non-state, or non-local

government sources, including the lender. In addition to the eligibility criteria applicable to all 7(a) loans, an Export Express borrower must have been in operation, although not necessarily in exporting, for at least 12 full months, unless certain additional requirements are met.

Export Express loan proceeds must be used for an export development activity, which includes the following:

- a. Obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;
- b. Participating in a trade show that takes place outside of the U.S.;
- c. Translation of product brochures or catalogues for use in markets outside of the United States;
- d. Obtaining a general line of credit for export purposes;
- e. Performing a service contract for buyers located outside the U.S.;
- f. Obtaining transaction-specific financing associated with completing export orders;
- g. Purchasing real estate or equipment to be used in the production of goods or services for export;
- h. Providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the U.S.; and
- i. Acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the U.S. in the production of goods or services for export.

Export Express Lenders must follow the same collateral policies and procedures that they have established and implemented for their similarly sized, non-SBA guaranteed commercial loans, including those concerning identification of collateral. Such policies and procedures must be commercially reasonable and prudent. Additionally, Export Express lines of credit over \$25,000 used to support the issuance of a standby letter of credit must have collateral (cash, cash equivalent or project) that will provide coverage for at least 25 percent of the issued standby letter of credit amount.

*B. Export Working Capital Program*

The statutory provisions for the Export Working Capital Program (EWCP) are in Sections 7(a)(14) and 7(a)(2)(D) of the Small Business Act, as amended (15 U.S.C. 636(a)(14) and 636(a)(2)(D)). Agency regulations at 13 CFR 120.340 to 13 CFR 120.344 govern EWCP. SBA's SOPs 50 10 5(K) and 50 57 2, as amended, describe in detail the policies and procedures governing EWCP. Under EWCP, SBA guarantees short-term export working capital loans made by participating lenders to eligible U.S. small business exporters. The maximum loan amount for an EWCP loan is \$5,000,000. The guaranty for EWCP loans is 90 percent, not to exceed \$4,500,000.

EWCP loan maturities may be for up to 3 years with annual renewals. EWCP loan facilities can be structured for single export transactions, multiple export transactions or as asset-based lines of credit. EWCP loan proceeds can be used only to finance export transactions. An export transaction is the production and payment associated with a sale of goods or services to a foreign buyer. In addition to the eligibility criteria applicable to all 7(a) loans, an EWCP borrower must be in business for one full year at the time of application, but not necessarily in the exporting business,

unless waived by SBA. Additionally, as with all 7(a) loans, the EWCP lender must demonstrate that credit is not available elsewhere on reasonable terms to the borrower.

Eligible uses of EWCP loan proceeds are as follows:

- a. To acquire inventory;
- b. To pay the manufacturing costs of goods for export;
- c. To purchase goods or services for export;
- d. To support standby letters of credit;
- e. For pre-shipment working capital; and
- f. For post-shipment foreign accounts receivable financing.

SBA requires a first security interest sufficient to cover 100 percent of the EWCP loan amount (such as insured accounts receivable or letters of credit). Collateral must be located in the U.S., its territories or possessions. EWCP applicants are required to submit cash flow projections to support the need for the loan and demonstrate the ability to repay. After the EWCP loan is made, the EWCP borrower must submit continual progress reports.

### *C. International Trade Loan Program*

The statutory provisions for the International Trade Loan Program (ITL) are in Section 7(a)(16) and 7(a)(2)(E) of the Small Business Act, as amended (15 U.S.C. 636(a)(16) and 636(a)(2)(E)). Agency regulations at 13 CFR 120.345 to 120.349 govern the ITL program. SBA's SOPs 50 10 5(K) and 50 57 2, as amended, describe in detail the policies and procedures governing the ITL program. Under the ITL program, SBA guarantees term loans made by participating lenders to U.S. small businesses that are engaged in or preparing to engage in international trade or are adversely affected by

import competition. The maximum loan amount for an ITL loan is \$5,000,000. The ITL loans may receive a maximum guaranty of 90 percent or \$4,500,000, except that the maximum guaranty amount for any working capital component of an ITL loan is limited to \$4,000,000.

An applicant must demonstrate that the ITL loan proceeds will allow it to significantly expand an existing export market or develop new export markets, or that the applicant has been adversely affected by import competition and the loan will improve its competitive position. As with all 7(a) loans, the ITL lender must demonstrate that credit is not available elsewhere on reasonable terms to the borrower.

Eligible uses of ITL loan proceeds are as follows:

a. Acquire, construct, renovate, modernize, improve, or expand facilities and equipment to be used in the U.S. to produce goods or services involved in international trade, and to develop and penetrate foreign markets;

b. Refinance existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under 7(a) Loan Program Requirements; and

c. Provide working capital.

Each ITL loan must be secured either by a first lien position or first mortgage on the property or equipment financed by the ITL loan or on other assets of the borrower.

An ITL loan may be secured by a second lien position on the property or equipment financed by the ITL loan or on other assets of the borrower, if SBA determines the second lien position provides adequate assurance of the payment of the ITL loan.

## **II. Comments Requested**

This Advance Notice of Proposed Rulemaking (ANPRM) reflects a revision to the title submitted for this action in SBA’s Spring 2019 Semiannual Regulatory Agenda. In order to facilitate feedback from the public, the rule title for this action is revised from “Amendments to International Trade Loan Programs (RIN 3245-AG95)” to “Export Express, Export Working Capital, and International Trade Loan Programs (RIN 3245-AG95)”. SBA will include this revised rule title in its Fall 2019 Semiannual Regulatory Agenda and Regulatory Plan.

SBA requests comments from the public on the questions listed below. The list of questions is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. Responders are invited to comment on any or all portions of this ANPRM.

### *A. Questions About the Export Express Program*

1. Currently, the maximum loan amount for Export Express is \$500,000, and loans up to \$350,000 receive a 90 percent guaranty, while loans over \$350,000 receive a 75 percent guaranty. Is there a need for an SBA guaranty for U.S. small business exporters at this loan level to address a market gap? Are the current maximum loan amount and guaranty amounts affecting usage of the program?

2. What requirements, including underwriting and types of documentation, do lenders use for export loans made under their conventional policies to ensure that loan proceeds are used for their intended purpose?

3. The Export Express program allows participating lenders to monitor lines of credit using their own internal policies for similarly sized non-SBA guaranteed

commercial loans, provided that such policies are commercially reasonable and prudent. How do SBA requirements differ from lenders policies for conventional export loans regarding use of proceeds for unauthorized purposes?

4. Although the SBA Express and Export Express programs share many similarities, they are separate programs with separate maximum loan and guaranty amounts and different eligible uses of proceeds. Do lenders combine loans for both export and domestic uses for conventional commercial loans? If so, how does the monitoring, reporting and underwriting account for the different uses of proceeds?

5. The Export Express program allows participating lenders to refinance an existing Export Express loan under Export Express only if the original Export Express Lender is unable or unwilling to increase or make a second Export Express loan. Since all Export Express loans must have a stated maturity, do lenders support permitting the use of a term Export Express loan to refinance an Export Express revolving line of credit under other conditions?

6. Would the ability to submit Export Express loans using SBA One increase usage of the program? Do lending partners encounter any challenges in inputting Export Express loans into SBA's E-Tran system?

7. How can SBA revise the Export Express Loan Program Requirements to increase the number of lenders using the Export Express program and increase the number of eligible U.S. small businesses receiving loans under the program?

8. How can SBA revise the Export Express Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

*B. Questions About the Export Working Capital Program*

1. Although EWCP provides guarantees for short-term loans with maturities of up to 3 years, EWCP loans with a maturity of 12 months or less are charged a guaranty fee of one quarter of one (.25) percent, while EWCP loans with a maturity over 12 months and up to 3 years are charged a guaranty fee of between 2 percent and 3 and 3 quarters (3.75) percent depending on the amount of the loan. What fee structure do lenders use for similarly sized working capital loans, including asset-based loans? Would an alternative fee structure increase participation in EWCP?

2. Currently, the maximum loan amount for EWCP is \$5,000,000, and all loans receive a 90 percent guaranty. Per 7(a) loan program parameters, these loan guarantees must only be provided to eligible small businesses. Are these loan limits and credit facility types sufficient to serve the needs of U.S. small business exporters, particularly in light of the availability of a similar program with higher loan amounts at the Export-Import Bank of the United States (EXIM) which are not restricted to eligible small business?

3. Which, if any existing EWCP collateral requirements set forth in 13 CFR 120.343 differ from conventional lending standards for similarly sized commercial loans for collateral on asset-based lending export credit facilities?

4. Should SBA consider allowing lenders to advance loan proceeds under an EWCP line with sufficient collateral to ensure there is a 1:1 collateral ratio or better, rather than using a Borrowing Base Certificate, as is currently available in the 7(a) Working Capital CAPLine program? Would such a change increase usage of EWCP?

5. SBA understands that lenders and EXIM allow overseas accounts receivable and inventory owned by an affiliated entity of a borrower, located in overseas markets, to be included in a borrowing base on conventional export loans. What additional risks are associated with such a policy and what experience do lenders have recovering funds from the liquidation of such collateral for their non-SBA guaranteed loans of similar size?

6. What cash flow analysis (including projections) and documentation do lenders require on their conventional asset-based export loans similarly sized to SBA guaranteed loans?

7. What fees do lenders currently charge on conventional export loans similar in size to SBA guaranteed loans? What interest rates do lenders currently charge on conventional export loans similar in size to SBA guaranteed loans?

8. Non-bank lenders are allowed to participate in the EWCP program provided they are Small Business Lending Companies (SBLCs) or Non-Federally Regulated Lenders (NFRLs). Historically, Non-bank lender participation in the EWCP has been low. What outreach efforts and EWCP program changes would increase Non-bank lender utilization?

9. Would the inclusion of SBA One for electronic submission of EWCP loan applications increase usage of the program?

10. How can SBA revise the EWCP Loan Program Requirements to increase the number of lenders using the EWCP program and increase the number of eligible U.S. small businesses receiving loans under the program?

11. How can SBA revise the EWCP Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

C. *Questions About the International Trade Loan Program*

1. Currently, an ITL loan must be secured by a first lien position on the property or equipment financed by the loan or on other assets of the borrower, except that an ITL loan may be secured by a second lien position on the property or equipment or other assets of the borrower if SBA determines that the second lien position provides adequate assurance of payment of the ITL loan. Do the existing ITL collateral requirements align with commercial lending standards for collateralization of term facilities for capital assets? What other options for collateral are used in the extension of conventional commercial export loans of similar size?

2. ITL applicants must have a business plan reasonably supporting their projected export sales. Is there a need for additional policy guidance regarding this requirement?

3. Although ITL loans can be processed under a lender's delegated authority, is there a need for a streamlined delivery method for ITL loans with a maximum limit of \$350,000 or less? Would such a delivery method increase lender usage of the ITL loan program?

4. Would the inclusion of the ITL programs in SBA One increase usage of the program? Do lending partners encounter any challenges in inputting ITL loans into SBA's E-Tran system?

5. How can SBA revise the ITL Loan Program Requirements to increase the number of lenders using the ITL program and increase the number of eligible U.S. small businesses receiving loans under the program?

6. How can SBA revise the ITL Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

*D. Export Financing General Comments*

SBA is seeking comments and recommendations on additional 7(a) Loan Program changes in order to increase the number of U.S. small business exporters and the volume of U.S. small business exports. Comments and recommendations are not limited to specific financial products. SBA would be interested in hearing from commenters on the need for loan guarantees for financial products specifically tailored for standby letters of credit, lease financing, purchase order financing, receivable factoring platforms, or supply chain finance.

Interested parties are invited to provide any other comments that they may have relating to the concerns described in this ANPRM. We ask that you provide a brief justification for any suggested changes.

Christopher Pilkerton  
*Acting Administrator*

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