

§ 120.348

the refinancing of 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 to provide working capital.

[61 FR 3235, Jan. 31, 1996, as amended at 76 FR 63546, Oct. 12, 2011]

§ 120.348 Amount of guarantee.

The maximum loan amount for any one International Trade (IT) loan is \$5,000,000. IT 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 IT loan is limited to \$4,000,000. To the extent that the Borrower has a separate EWCP loan or any other 7(a) loan for working capital, the guaranty amount for the other loan is counted against the \$4,000,000 guaranty limit for the IT loan.

[76 FR 63546, Oct. 12, 2011]

§ 120.349 Collateral.

Each IT loan must be secured either by a first lien position or first mortgage on the property or equipment financed by the IT loan or on other assets of the Borrower, except that an IT loan may be secured by a second lien position on the property or equipment financed by the IT loan or on other assets of the Borrower, if the SBA determines the second lien position provides adequate assurance of the payment of the IT loan.

[76 FR 63546, Oct. 12, 2011]

QUALIFIED EMPLOYEE TRUSTS (ESOP)

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust ("ESOP") to:

- (a) Help finance the growth of its employer's small business; or
- (b) Purchase ownership or voting control of the employer.

§ 120.351 Definitions.

All terms specific to ESOPs have the same definition for purposes of this section as in the Internal Revenue Service (IRS) Code (title 26 of the United States Code) or regulations (26 CFR chapter I).

13 CFR Ch. I (1-1-14 Edition)

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.353 Eligibility.

SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury and Department of Labor (DOL) regulations. In addition, the following conditions apply:

- (a) The small business must provide the funds needed by the trust to repay the loan; and
- (b) The small business must provide adequate collateral.

§ 120.354 Creditworthiness.

In determining repayment ability, SBA shall not consider the personal assets of the employee-owners of the trust. SBA shall consider the earnings history and projected future earnings of the employer small business. SBA may consider the business and management experience of the employee-owners.

VETERANS LOAN PROGRAM

§ 120.360 Which veterans are eligible?

SBA may guarantee or make direct loans to a small business 51 percent owned by one or more of the following eligible veterans:

- (a) Vietnam-era veterans who served for a period of more than 180 days between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably;
- (b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or
- (c) A veteran of any era who was discharged for disability.