

**U.S. SMALL BUSINESS ADMINISTRATION
INTERMEDIARY LENDING PILOT (ILP) PROGRAM**

PROCEDURAL GUIDE

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SBA's Intermediary Lending Pilot (ILP) Program

PROCEDURAL GUIDE

I. Introduction

The Intermediary Lending Pilot (ILP) program is a three year pilot program authorized by the Small Business Jobs Act of 2010 to provide loans of up to \$1,000,000 to nonprofit intermediaries for the purpose of providing loans to small businesses. The program authorizes the Small Business Administration (SBA) to select up to twenty (20) nonprofit intermediaries each year to receive loans of up to \$1,000,000, subject to the availability of funds. Selected ILP Intermediaries will, in turn, use the funds to make loans of up to \$200,000 to eligible startup, newly established or growing small businesses.

The purpose of the ILP program is to assist small businesses in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market. The purpose of this Procedural Guide is to provide ILP Intermediaries with program procedures and guidance for implementing and managing their ILP programs and reporting ILP program activity.

II. ILP Intermediary Selection and Responsibilities

A. Selection of ILP Intermediaries

Only organizations that have applied for and been selected by SBA to receive an ILP Loan may participate as ILP Intermediaries. SBA has authority to make ILP Loans to no more than 20 ILP Intermediaries in each of fiscal years 2011, 2012, and 2013, for a maximum total of 60 ILP Intermediaries. SBA selected 20 ILP Intermediaries through a competitive application process in fiscal year 2011 and will select a maximum of 20 ILP Intermediaries through a second competitive application round in fiscal year 2012, for a total of up to 40 ILP Intermediaries. SBA currently has funding to make ILP Loans only in fiscal years 2011 and 2012. If additional funds are appropriated for the ILP program, SBA will select up to 20 ILP Intermediaries in fiscal 2013 for a total of up to 60 ILP Intermediaries. SBA will publish a Notice of Funds Availability (NOFA) in the Federal Register to advise potential applicants of when they may begin submitting applications to become an ILP Intermediary.

B. Responsibilities of ILP Intermediaries

1. As described in 13 CFR 109.100(a), the ILP Intermediary must be a private, nonprofit entity other than an intermediary participating in the SBA Microloan program. An ILP Intermediary may not apply to become a Microloan Intermediary while its ILP Loan is outstanding to SBA.

2. The ILP Intermediary must have paid staff with loan making and servicing experience acceptable to SBA.

As part of the initial application process, potential ILP Intermediaries are required to submit SBA Forms 1081, Statement of Personal History, for members of the Board of Directors, Officers, Associates, personnel involved in day-to-day management of the applicant organization, and any personnel integral to the implementation, servicing, and reporting for the ILP program.

As a condition of continued participation, ILP Intermediaries must submit to the Chief, Microenterprise Development Branch the resumes and SBA Forms 1081 of any new board members, management, and staff while the ILP Loan remains outstanding.

3. The ILP Intermediary must have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans including, but not limited to:
 - a. Holding sufficient permanent capital (as determined by SBA) to support lending activities under this program; and
 - b. Maintaining satisfactory SBA performance, as determined by SBA in its discretion.
4. The ILP Intermediary must meet and maintain the ethical requirements of 13 CFR § 120.140.
 - a. The ILP Intermediary must act ethically and exhibit good character. Conduct of the ILP Intermediary's Associates and staff will be attributed directly to the lender. The ILP Intermediary is required to notify SBA immediately upon becoming aware of any unethical behavior by its staff or its Associates. Examples of unethical behavior are found at 13 CFR 120.140.
 - b. Conflicts of Interest
 - i. The ILP Intermediary or its Associates must not have a real or apparent conflict of interest with a small business or SBA. (13 CFR 120.140 and 13 CFR Part 105) An ILP Intermediary is prohibited from making a loan to a small business in which a current SBA employee or a Close Relative of a current SBA employee is a director, officer, employee or 10% or greater owner of the small business.
 - ii. Factors that may indicate a conflict of interest

The ILP Intermediary must exercise care and judgment in determining whether a conflict of interest exists and document the file in detail. The ILP

Intermediary should not make a loan if the ILP Intermediary, its Associates, partner or a close relative:

- (a) Has a direct or indirect financial or other interest in the Small Business Applicant; or
 - (b) Had such interest within 6 months prior to the date of application.
5. The ILP Intermediary (and any Affiliates) that participate in other SBA programs must be in compliance with those program requirements at time of application. Failure to remain in compliance with one program may result in an entity being required to exit other programs.
 6. The ILP Intermediary must maintain good standing with its Federal and/or State regulator, as applicable.
 7. The ILP Intermediary must comply with the ILP Program Requirements, including reporting requirements, as such requirements are revised from time to time, for as long as the ILP Intermediary holds outstanding debt to SBA through the ILP program. ILP Program Requirements in effect at the time that the ILP Intermediary takes an action in connection with a particular loan govern that specific action.
 8. The ILP Intermediary must obtain SBA's prior written consent before reorganizing, merging, consolidating, or otherwise changing ownership or business structure. Such requests must be submitted to the Chief, Microenterprise Development Branch.
 9. The ILP Intermediary must comply with the provisions regarding Advertising of Relationship with SBA. (See 13 CFR 120.413 and SOP 50 10 5(D), Subpart A, Chapter 1, Paragraph II.E.8.)
10. Lending Requirements

a. ILP Relending Fund

The ILP Intermediary is required to establish a deposit account at a federally-insured, well-capitalized financial institution for the ILP Relending Fund Account (RFA). The ILP Intermediary must maintain the RFA for as long as it has an outstanding balance owed to SBA under the ILP program.

The ILP Intermediary must deposit all ILP Loan proceeds disbursed from SBA into the RFA, as well as all payments received by the ILP Intermediary from loans made to Eligible Small Business Concerns. Interest earned on the RFA and interest received from payments received by the ILP Intermediary from small business loans may be removed from the RFA and may be used for any purpose as determined by the ILP Intermediary.

With the exception of withdrawing earned interest, ILP Intermediaries may only use funds in the RFA to disburse ILP loans to Eligible Small Business Concerns and to make payments to SBA on the ILP Loan. ILP Intermediaries may not make SBA guaranteed loans with proceeds from the RFA. The ILP Intermediary must not commingle funds from any other public program or any other source in this account and the RFA cannot be used for any other purpose.

The source and use of funds within the RFA must be reported to SBA quarterly on SBA Form 2418, ILP Program Activities Report. See Section V of this guide for more information on reporting requirements.

b. Initial Lending Requirement

The ILP Intermediary is required to commit 100% of the ILP Loan proceeds to Eligible Small Business Concerns within two years of the ILP Note Date. Thus, if the ILP Intermediary receives a \$1 million loan from SBA, it must commit \$1 million in loans to Eligible Small Business Concerns within two years. SBA uses the term commit to mean loan approvals. In the case of lines of credit, the approved line of credit amount will count toward the initial lending requirement.

If the ILP Intermediary fails to meet or maintain the initial lending requirement, SBA may cancel any undisbursed balance of the ILP Loan or require the ILP Intermediary to refund part, or all, of the unused portion of the ILP Loan. Any funds repaid to SBA under this requirement will be applied to the outstanding principal balance of the ILP Loan.

The Associate Administrator of Capital Access (AA/CA), or designee, may, in his or her sole discretion, grant the ILP Intermediary additional time to commit the ILP Loan proceeds. The decision to extend additional time to the ILP Intermediary will be based on evidence satisfactory to SBA that the undisbursed or unused funds will be committed for eligible loans to small businesses within a reasonable period of time.

c. Ongoing Relending Requirement

The ongoing relending requirement begins 2.5 years from the date of the ILP Note or when the ILP Intermediary has disbursed 100% of the ILP Loan proceeds via loans to Eligible Small Business Concerns, whichever is sooner. The ILP Intermediary must continue to make loans to Eligible Small Business Concerns from the ILP Relending Fund so that the total principal balance of loans outstanding to Eligible Small Business Concerns does not fall below 75% of the outstanding principal balance of the ILP Loan at any time. For example, an ILP Intermediary that has met the initial lending requirement and has an outstanding balance of \$800,000 on its ILP Loan must have a total outstanding principle

balance of at least \$600,000 in loans disbursed to Eligible Small Business Concerns ($\$800,000 \times 75\% = \$600,000$).

The AA/CA, or designee, may, in his or her sole discretion, grant an exception to the relending requirement on a case by case basis based on the particular facts and circumstances of the ILP Intermediary.

11. Loss Reserve

a. ILP Loan Loss Reserve Account

In addition to the RFA, the ILP Intermediary is required to create a deposit account at a federally-insured, well-capitalized financial institution for the ILP Loan Loss Reserve Account (LLRA). This loan loss reserve must be maintained in a separate and distinct account from the ILP Intermediary's other assets and financial activities. Additionally, the reserve is to be maintained on a cash basis rather than an accrual basis. To the extent practicable, funds in the LLRA should not be in excess of the maximum insured amount.

Proceeds from the ILP Loan may not be used to fund the LLRA requirement. However, interest and fees collected from borrowers may be used to fund the LLRA.

The ILP Intermediary must report on the reserves dedicated to its ILP portfolio on SBA Form 2418, ILP Program Activities Report, to be submitted quarterly. See section V of this guide for more information on reporting requirements.

b. Loss Reserve Requirements

As a condition of the ILP Loan, the ILP Intermediary must maintain a reasonable loan loss reserve appropriate for the quality of the ILP Intermediary's portfolio to cover potential losses arising from defaulted loans. The ILP Intermediary should follow the loan loss reserve policies it indicated it would follow in its Application for Selection. At no time, however, may this reserve be less than 5% of the principal balance of all outstanding loans disbursed to Eligible Small Business Concerns from the RFA.

The ILP Intermediary may meet this requirement by funding a loss reserve up front and monitoring compliance with the 5% requirement, or it may contribute to the loss reserve on a loan by loan basis as it disburses loans to Eligible Small Business Concerns. From the time of the initial disbursement of a loan to an Eligible Small Business Concern until the ILP loan from SBA to the ILP Intermediary is paid in full, the ILP Intermediary is required to maintain funds in the LLRA equal to or greater than 5% of the aggregate outstanding balance of all loans disbursed to Eligible Small Business Concerns by the ILP Intermediary

through this program. The ILP Intermediary must reconcile the LLRA on a quarterly basis to ensure the appropriate amount is maintained.

c. **Periodic Reviews**

SBA will conduct periodic reviews of the sufficiency of the ILP Intermediary’s loan loss reserves in relation to the quality of the ILP portfolio. Should SBA determine that the amount of loan loss reserves is insufficient for the default rates experienced by the ILP Intermediary, the AA/CA, or designee, may require that the ILP Intermediary increase its reserves to a level appropriate to protect SBA from loss. In making this sufficiency determination, SBA will consider the risk characteristics and performance of the ILP Intermediary and whether the ILP Intermediary may have other financial reserves to cover additional potential losses.

III. Loan from SBA to the ILP Intermediary

A. Terms

The terms of a loan from SBA to the ILP Intermediary are summarized in the chart below:

ILP Loans between SBA and ILP Intermediary	
Maximum Loan Amount	\$1 million
Maturity	20 years from date of the ILP Note
Interest Rate	1% per annum, fixed
Collateral	None
Fees	None
Matching Funds	None; however, the ILP Intermediary must fund the LLRA from sources other than proceeds of the ILP Loan

B. Loan Limits

No ILP Intermediary (including Affiliates) may receive more than \$1,000,000 in ILP Loans. SBA anticipates making ILP Loans of \$1 million to each ILP Intermediary in order to fully utilize all available loan funds. Therefore, each ILP Intermediary will only be eligible to receive one ILP Loan.

C. Purposes

The proceeds of the ILP Loan must only be used to make direct loans of \$200,000 or less to Eligible Small Business Concerns for working capital, real estate (except for real estate

acquired and held primarily for sale, lease, or investment), or the acquisition of materials, supplies, furniture, fixtures, or equipment.

ILP Loan funds must not be used for maintenance of loan loss reserves or payment of administrative costs or expenses of the ILP Intermediary. ILP Loan proceeds must not be used to make SBA guaranteed loans.

D. Closing

The closing of the ILP Loan to the Intermediary will be facilitated by the appropriate SBA District Office. SBA will send all selected ILP Intermediaries a letter with instructions on the loan closing process. Loan closing must take place within the timeframe specified in the letter. Failure to close the loan within the specified timeframe may result in cancellation of the ILP Loan. If this should happen and time permits, an alternate applicant(s) identified by the ILP Intermediary Selection Committee may be selected to become an ILP Intermediary. Under certain circumstances, and at the sole discretion of SBA, an extension of the timeframe may be granted.

At the loan closing, District Office counsel should ensure that the following documentation has been properly executed as part of the application or closing process:

ILP Loan – Closing Documentation Requirements	
SBA Form	Document
	Loan Authorization and Agreement
	Note
<u>2420</u>	<u>Resolution of the Board of Directors</u>
<u>1623</u>	<u>Certification Regarding Debarment (Primary Tier)</u>
<u>1711</u>	<u>Certification Regarding Lobbying</u>
<u>SF 3881</u>	<u>For ILP Relending Fund Account</u>
<u>SF 5510</u>	<u>For ILP Relending Fund Account</u>
<u>LLL</u>	<u>Disclosure of Lobbying Activities</u>

E. Disbursement

1. Direct Deposit

The ILP Loan will be disbursed to the ILP Intermediary through direct deposits to the RFA. Standard Form 3881 (ACH Vendor/Miscellaneous Payment Enrollment Form) will be used for this purpose. This form must be completed by SBA, the ILP Intermediary, and the insured depository institution where the ILP Relending Fund Account is established and maintained.

2. Initial disbursement

The initial disbursement will be made as soon as possible after receipt of a satisfactory loan closing package from the District Office handling the closing, after receipt of a Certificate of Good Standing from the applicable Secretary of State (no more than 18 months old), and after receipt of a disbursement request from the ILP Intermediary. The disbursement request may be submitted via email to the Microenterprise Development Branch. The initial disbursement will be no greater than 50% of the ILP Loan amount or \$500,000, whichever is less.

3. Subsequent disbursements

Subsequent disbursements will be made on an as needed basis. Subsequent disbursements will be limited to \$500,000 or the remaining undisbursed balance of the ILP Loan, whichever is less. Full disbursement should generally be accomplished with no more than three disbursements. ILP Intermediaries should manage its request for funds based on its pipeline requirements and should not request funding on a loan-by-loan basis. The disbursement process may take up to ten business days from the day the Microenterprise Development Branch sends the request to the Denver CFO to the day the funds are deposited to the ILP Intermediary's RFA.

Subsequent disbursements may be withheld if, in SBA's sole discretion (i) there has been an adverse change in the ILP Intermediary's financial condition or in any other material fact represented in the Loan application; (ii) the ILP Intermediary has not disbursed to eligible small businesses in accordance with ILP Program Requirements at least 80% of previous disbursements; (iii) the ILP Intermediary is not current on the reporting requirements described in 13 CFR § 109.360(b) (as amended from time to time); (iv) the ILP Intermediary does not demonstrate acceptable portfolio performance as determined by SBA; (v) the ILP Intermediary fails to meet the terms and conditions of the Loan Authorization and Agreement or any ILP Program Requirement; or (vi) there is an event of default.

Satisfactory disbursement of ILP Loan proceeds will be evaluated by an analysis of one or more of the following: 1) loans entered by the ILP Intermediary in the Intermediary Lending Program Electronic Reporting System (ILPERS); 2) RFA bank statements for the previous 3 months; and 3) sample credit memorandums. Prior to receiving a second disbursement, SBA may require that the ILP Intermediary provide SBA credit memos from loans previously funded with ILP Loan proceeds for SBA's review.

4. Disbursement period

No disbursement will be made later than two years from the date of the Note, unless SBA, in its sole discretion, extends this disbursement period.

F. Repayment

1. Deferment period

Payment of principal and interest will be deferred for a period of **two years from the date of the first disbursement to the ILP Intermediary**. During the deferment period, interest will accrue on the funds disbursed by SBA to the ILP Intermediary. At the end of the deferment period, the total amount of accrued and unpaid interest will be added to the outstanding principal balance of the Note and the sum of the two will be amortized over the remaining term of the Loan.

2. Quarterly payments

At the end of the deferment period, payments of principal and interest will be due and payable on a calendar quarter basis commencing on the seventh day of the first month of the first full calendar quarter after the deferment period. The payment schedule will be as follows: (i) January 7 for the quarter ending December 31; (ii) April 7 for the quarter ending March 31; (iii) July 7 for the quarter ending June 30; and (iv) October 7 for the quarter ending September 30. For example, if an ILP Intermediary receives its first disbursement on October 15, 2011, then the first payment would be due on January 7, 2014. SBA will notify the ILP Intermediary of its payment amount prior to the end of the deferment period. Quarterly payments must begin in accordance with this paragraph regardless of whether the ILP Loan has been fully disbursed to the ILP Intermediary.

Payments must be made through a preauthorized automatic debit from the ILP Relending Fund. Payments made by the ILP Intermediary will be applied first to interest accrued to the date of receipt of each payment, and the balance, if any, will be applied to principal.

3. Prepayment and voluntary termination

The ILP Intermediary may prepay its ILP Loan at any time without penalty in order to terminate its participation in the ILP program. If an ILP Intermediary wishes to terminate its participation in the ILP program, it must send written notification to the Microenterprise Development Branch at 409 Third Street SW, Washington, DC 20416 regarding its intent to terminate participation. SBA will review the notification and determine the amount owed to SBA by the ILP Intermediary. Prepayments must

be accompanied by interest accrued on the amount prepaid through the date of prepayment.

IV. Loans from the ILP Intermediary to Eligible Small Business Concerns

A. General

The ILP Intermediary has complete authority for loans made to Eligible Small Business Concerns under the ILP program. The ILP Intermediary is responsible for all eligibility, loan approval, disbursement and servicing decisions including the terms and conditions under which the loan is made consistent with the rules set forth in this Procedural Guide and all other ILP Program Requirements. The ILP Intermediary is also responsible for all liquidation and collection activities. For all loans approved under this program, the ILP Intermediary is expected to use the underwriting procedures and lending criteria as described in its Application for Selection to the ILP program. ILP Intermediaries must use their own forms for the loan application and loan closing.

The ILP Intermediary may contact the local SBA District Office or Headquarters for advice on any complex or unusual issues. Any guidance provided by SBA will be considered advisory only in nature. The ILP Intermediary retains complete authority and responsibility for all decisions regarding loans made under this program.

B. Eligible Small Business Concerns

While the ILP Intermediary may use its own application procedures to evaluate potential borrowers, the ILP Intermediaries must also ensure that the Eligible Small Business Concerns meets the eligibility criteria described in 13 CFR 109.400. These eligibility criteria are based on requirements applicable to SBA's 7(a) loan program. To be eligible to receive loans from an ILP Intermediary under this program, the applicant business must meet the following eligibility requirements:

1. The business must be organized for profit.
2. The business must be located in the United States or one of its territories.
3. The business must be small under the size requirements applicable to 7(a) business loans (including Affiliates).

The applicant business alone (without affiliates) must not exceed the size standard for the industry in which the applicant is primarily engaged AND the applicant business combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher.

For most retail businesses, the applicant and its affiliates cannot exceed \$7.0 million in gross sales averaged over the last 3 fiscal years. For most wholesale businesses, the applicant and its affiliates cannot have more than 100 employees. For most manufacturing businesses, the applicant and its affiliates cannot have more than 500 employees.

The applicable size standards are increased by 25% when the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are designated by the Department of Labor. (13 CFR 121.301(e))

The applicant business may qualify under either the industry size standards discussed above or the alternative size standard. To qualify under the alternative size standard, the applicant business must meet the following:

- a) The maximum tangible net worth of the applicant is not more than \$15,000,000; and
- b) The average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

For more information, see [13 CFR Part 121](#) and [SOP 50 10 5 \(D\)](#), Subpart B, Chapter 2, III.B.

4. The business must be a startup, newly established, or growing small business.
5. The business must be unable to borrow the requested funds on reasonable terms elsewhere.

ILP Intermediaries must determine that an Eligible Small Business Concern is unable to obtain a loan on reasonable terms from non-Federal sources (e.g. traditional bank loans).

The ILP Intermediary must document in the loan file why the borrower is unable to obtain credit elsewhere at a comparable interest rate or term. Examples of this documentation may include a self-certification letter from the borrower that they were either denied a loan or are unable to obtain a comparable interest rate from another lender or an explanation that the borrower's limited collateral, credit score, etc., prevents it from obtaining traditional bank financing. The ILP Intermediary is not required to apply the personal resources test used in the 7(a) program. Additionally, the ILP program does not require that small business borrowers provide a denial letter from another lending institution.

6. The business must be creditworthy and demonstrate reasonable assurance of repayment of the loan.

SBA anticipates that the ILP Intermediary will analyze each application in a commercially reasonable manner, consistent with prudent lending standards and the underwriting policies and procedures detailed in the ILP Intermediary's Application for Selection. The ILP Intermediary is ultimately responsible for determining the underwriting factors to assess creditworthiness and repayment ability. The ILP Intermediary has complete authority to make loan approval decisions without prior SBA review.

7. The business must be an eligible type of business to receive a loan from an ILP Intermediary as stated in 13 CFR 109.400. The following types of businesses are not eligible to receive a loan under the ILP program:
 - a) Nonprofit businesses (for-profit subsidiaries are eligible);
 - b) Financial businesses primarily engaged in the business of lending;
 - c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;
 - d) Life insurance companies;
 - e) Businesses located in a foreign country;
 - f) Pyramid sale distribution plans;
 - g) Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
 - h) Businesses engaged in any illegal activity;
 - i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;
 - j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);
 - k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
 - l) Consumer and marketing cooperatives;

A producer cooperative is eligible for SBA financing if: (1) it is engaged in a business activity; (2) the purpose of the cooperative is to obtain financial benefit

for itself as an entity and its members in their capacity as businesses; and (3) each member of the cooperative is small.

Worker cooperatives, in which the employees of the small business cooperatively own the company, are eligible for loans under the ILP program if they meet the requirements for Eligible Small Business Concerns in 13 CFR § 109.400.

- m) Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;
- n) Businesses in which the ILP Intermediary or any of its Associates owns an equity interest;
- o) Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;
- p) Businesses which:
 - i. Present live performances of a prurient sexual nature; or
 - ii. Derive directly or indirectly more than 5 percent of gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- q) Businesses that have caused a Prior Loss to the Government (13 CFR 120.110 (q)) or have Delinquent Federal Debt (31 CFR 285.13).
 - i. These rules apply to:
 - (a) The Small Business Applicant;
 - (b) Any business in which an Associate of the Small Business Applicant owned, operated or controlled a business that incurred the Delinquent Federal Debt or caused the Prior Loss;
 - (c) Any business controlled by the same person(s) who controls/controlled the business that incurred the Delinquent Federal Debt or caused the Prior Loss;
 - (d) Any Associate of the Small Business Applicant who has (or guaranteed) a Delinquent Federal Debt or caused a Prior Loss (either directly or as a guarantor); and
 - (e) Any guarantor who has (or guaranteed) a Delinquent Federal Debt or a caused Prior Loss (either directly or as a guarantor).

- ii. ILP Intermediaries cannot provide assistance to a Small Business Concern if there has been a Prior Loss to the Government. Prior Loss means the dollar amount of any deficiency on a Federal loan or Federally assisted financing which has been incurred and recognized by a Federal agency after it has concluded its write-off and/or close-out procedures for the particular account including the following:
 - (a) Loss on the sale or other disposition of collateral acquired after default;
 - (b) Compromise, i.e., resolution or settlement of a loan balance for less than the full amount due;
 - (c) Bankruptcy by a borrower and/or any guarantors; and
 - (d) Any unreimbursed advance payments by a Federal agency.
- iii. ILP Intermediaries also cannot provide assistance to a Small Business Concern if there is a Delinquent Federal Debt. A debt is considered delinquent when any Federal loan or Federally assisted financing has not been paid within 90 days of the payment due date. A debt is considered delinquent even if the creditor agency has suspended or terminated collection activity with respect to such debt. A debt is not considered delinquent if:
 - (a) The creditor agency has released the obligor from paying the debt;
 - (b) The obligor is subject to, or has been discharged in, a bankruptcy proceeding;
 - (c) The obligor has entered into a satisfactory written repayment agreement and is current; or
 - (d) The debt is in an administrative or judicial appeal process. (Note: If there was a loss associated with any of these debts, however, the loan remains subject to the rules governing a Prior Loss to the Government under paragraph q)(ii) above.)
- iv. Federal loan or Federally assisted financing includes any loan made directly or guaranteed/insured by any Federal agency, any unreimbursed advance payments under 8(a) or similar programs operated by any Federal agency, federally-backed student loans and disaster loans (excluding any amount forgiven as a condition of the loan at the time of origination). It does not include unpaid/delinquent taxes or any loss incurred by the Federal Deposit Insurance Corporation (FDIC) when it sells a loan at a discount.
- v. ILP Intermediaries are responsible for checking the Credit Alert Verification Reporting System (CAIVRS) to determine if any of the individuals or

businesses identified in paragraph (q)(i) above has either a Delinquent Federal Debt or a Prior Loss which would result in the Small Business Concern being ineligible for SBA financial assistance.

CAIVRS allows the ILP Intermediary to enter multiple tax id numbers (either SSN or EIN) to search for an outstanding Delinquent Federal Debt or Prior Loss in connection with a loan application. Instructions for accessing CAIVRS are located at

http://www.hud.gov/offices/hsg/sfh/sys/caivrs/caivrs_faq.cfm.

If the Delinquent Federal Debt or Prior Loss to the Government is fully satisfied, the Small Business Concern may be eligible. The ILP Intermediary must document its file as to how the debt or loss has been fully satisfied.

- r) Businesses primarily engaged in political or lobbying activities;
- s) Speculative businesses (such as oil wildcatting);
- t) Businesses located in a Coastal Barrier Resource Area (as defined in the Coastal Barriers Resource Act);
- u) Businesses owned or controlled by an applicant or any of its Associates who are more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement;
- v) Businesses in which any Associate is an undocumented (illegal) alien; or
- w) Businesses owned or controlled by an applicant or any of its Associates who are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

C. Loan Limits

No small business (including Affiliates) may have more than \$200,000 outstanding under the ILP program at any one time. This \$200,000 maximum applies not only to a single ILP Intermediary, but to the entire ILP program. Therefore, the ILP Intermediary must take into account any other loans that the small business applicant has received from other ILP Intermediaries. For example, an Eligible Small Business Concern that has an outstanding loan of \$50,000 from an ILP Intermediary may receive an additional loan from the same ILP Intermediary or a different ILP Intermediary as long as the amount of the second loan does not exceed \$150,000.

D. Terms

1. Summary

The terms of a loan made by the ILP Intermediary to an Eligible Small Business Concern must be agreed to by the ILP Intermediary and the Eligible Small Business Concern. The loan terms and purposes must be within the limits established by SBA in 13 CFR 109.420 and 109.430 and presented in the chart below:

Loans between ILP Intermediary and Eligible Small Business Concerns	
Maximum Loan Amount	\$200,000; No Eligible Small Business Concern may have more than \$200,000 in ILP Loan proceeds outstanding at any one time
Maximum Interest Rate	Loans \$50,000 or less – 8.75%
	Loans greater than \$50,000 – 7%
Use of Proceeds & Maximum Maturity Periods	Working capital – 10 years
	Furniture, fixtures, materials, supplies, and equipment – 10 years if the useful life is 10 years or less; 25 years if the useful life exceeds 10 years
	Real estate – 25 years
Allowable Fees	Necessary out-of-pocket expenses, such as filing or recording fees
	Reasonable direct costs of liquidation
	Late payment fees (must not exceed 5% of the scheduled loan payment)
	Reasonable application and origination fees (total must not exceed 1% of the loan amount)

2. Maximum loan amount

The maximum loan that may be made to an Eligible Small Business Concern under this program is \$200,000. There is no minimum loan requirement.

The ILP program allows multi-party financing and does not place a particular restriction on the total financing project. The ILP Intermediary may provide a loan to an Eligible Small Business Concern as part of an overall lending package that may include other loans from other lenders including loans through other SBA lending programs. However, the ILP Intermediary must still ensure that the small business concern meets the credit elsewhere test. The ILP Intermediary would need to document why the business is otherwise unable to obtain traditional bank financing for the use of proceeds for the ILP loan.

3. Maturity

The term of a loan by the ILP Intermediary to an Eligible Small Business Concern should be the shortest appropriate term. The maximum loan term is 10 years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding 10 years, in which case the maximum loan term is 25 years (see chart above). Lines of credit may consist of a revolving period and maturity extensions of any length, as long as the combined term does not exceed 10 years.

4. Lines of credit

The ILP Intermediary may provide Eligible Small Business Concerns with revolving lines of credit. Lines of credit may consist of a revolving period and maturity extensions of any length, as long as the combined term does not exceed 10 years.

If, at any time, SBA determines that the ILP Intermediary's operation of revolving lines of credit is causing excessive risk of loss for the ILP Intermediary or SBA, the Agency may terminate the ILP Intermediary's authority to use the ILP Relending Fund proceeds for revolving lines of credit. Such termination will be by written notice and will prevent the ILP Intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

5. Interest

The maximum interest rate the ILP Intermediary may charge for loans less than or equal to \$50,000 is 8.75 percent. The maximum interest rate the ILP Intermediary may charge for loans greater than \$50,000 is 7 percent.

SBA may adjust the maximum interest rates from time to time; SBA will publish any such change by Notice in the Federal Register. Changes to the maximum interest rate do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the Federal Register.

6. Fees

The ILP Intermediary must not impose any fees or direct costs on Eligible Small Business Concerns, except for the following allowed fees or direct costs:

- a) Necessary out-of-pocket expenses, such as filing or recording fees. Allowable out-of-pocket expenses are the same as those permitted in the 7(a) program. They include all direct costs, such as filing or recording fees, photocopying, delivery charges, collateral appraisals, and other direct charges related to loan closing. Only legal/attorney time for document preparation directly associated with the closing of the loan may be included in out-of-pocket expenses;
- b) The reasonable direct costs of any liquidation;
- c) A late payment fee not to exceed 5 percent of the scheduled loan payment; and
- d) Reasonable application and origination fees, subject to a maximum total fee cap of 1 percent of the amount of the loan to the Eligible Small Business Concern. SBA may adjust the maximum total fee cap from time to time; SBA will publish any such change by Notice in the Federal Register. Changes to the maximum total fee cap do not apply to loans made to Eligible Small Business Concerns prior to publication of the change in the Federal Register.

E. Purposes

1. Eligible purposes

The proceeds of a loan from the ILP Intermediary to an Eligible Small Business Concern may only be used for working capital, real estate (except for real estate acquired and held primarily for sale, lease, or investment), or the acquisition of materials, supplies, furniture, fixtures, or equipment.

F. Other Requirements

Loans made by the ILP Intermediary must comply with all applicable laws, including the following:

1. Flood Insurance (13 CFR 120.170)

- a) SBA flood insurance requirements are based on the Standard Flood Hazard Determination FEMA Form 81-93.
- b) If any portion of a building that is collateral for the loan is located in a special flood hazard area, the ILP Intermediary must require the Eligible Small Business

Concern to obtain flood insurance for the building under the National Flood Insurance Program (NFIP). Note that the ILP Intermediary is not required to obtain collateral on loans made to Eligible Small Business Concerns under the ILP program.

- c) If any equipment, fixtures or inventory that is collateral for the loan (“Personal Property Collateral”) is in a building any portion of which is located in a special flood hazard area and that building is collateral for the loan, the ILP Intermediary must require the Eligible Small Business Concern to also obtain flood insurance for the Personal Property Collateral under the NFIP.
- d) If any Personal Property Collateral is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the loan, the ILP Intermediary must require the Eligible Small Business Concern to obtain available flood insurance for the Personal Property Collateral. The ILP Intermediary may waive this requirement when the building is not collateral for the loan if it:
 - i. Uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and
 - ii. Includes a written justification in the loan file that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available.
- e) Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available.
- f) Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of the ILP Intermediary.

2. Flood-Plain and Wetlands Management (13 CFR 120.172)

SBA has specific requirements for providing financial assistance to a small business located in a floodplain or a wetland. See 13 CFR 120.172.

3. Lead-Based Paint (13 CFR 120.173)

If loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of seven years.

4. Earthquake Hazards (13 CFR 120.174)

Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," applies to the Agency's loan programs. Its provisions must be followed even in areas which traditionally do not have earthquake activity. There are no exceptions.

5. Civil Rights Laws (13 CFR parts 112, 113, 117, and 136)

All SBA loans are subject to all applicable laws, including laws prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age.

G. Underwriting

Underwriting requirements for loans to Eligible Small Business Concerns are determined by the ILP Intermediary. Although the ILP Intermediary is not specifically directed to require collateral or an equity injection by the Eligible Small Business Concerns, SBA expects the ILP Intermediary to implement prudent lending practices, which could include requiring collateral and/or a contribution by the borrower(s). The ILP Intermediary must practice prudent lending, but specific underwriting requirements are left to the ILP Intermediary to decide.

No ILP Intermediary, and no Associate of an ILP Intermediary (as that term is defined in 13 C.F.R. § 120.10), may take, or hold, an equity or other form of ownership interest in any business receiving financing under this program. Equity presents a conflict of interest between the ILP Intermediary and the Eligible Small Business Concern.

H. Servicing & Collection Activities

The ILP Intermediary is expected to service its loans according to the portfolio management policies and procedures described by the ILP Intermediary in its Application for Selection to the ILP program. ILP Intermediaries are expected to have policies in place for: 1) conducting regular portfolio reviews to monitor loan performance; 2) charging-off loans; 3) conducting intensive servicing; and 4) liquidation and debt collection.

ILP Intermediaries may opt to follow SBA servicing and liquidation SOPs (SOPs 50 50 and 50 51) in place of its own internal policies and procedures. ILP Intermediaries that wish to follow SBA SOPs must notify SBA immediately. Similarly, any change in the ILP Intermediary's policies or procedures for servicing or liquidation must be disclosed to SBA.

SBA generally anticipates that loans to Eligible Small Business Concerns will be charged-off when loans are 120 days delinquent. In some instances, particularly in cases involving bankruptcy proceedings or loans having real estate as collateral, compliance with this requirement may be impractical. In those cases, the ILP Intermediary should contact SBA for advice. At the time a loan to an Eligible Small Business Concern is charged off, the amount of the outstanding principal balance of the charged-off loan must be transferred to the RFA, and the LLRA replenished to the required 5% amount. SBA will monitor the portfolio performance of the ILP Intermediary's loans disbursed through this program on a quarterly basis and may require the ILP Intermediary to charge-off nonperforming loans and/or increase its loan loss reserve requirement.

I. Prohibition on Sales of Loans

SBA does not allow the ILP Intermediary to sell all or any portion of a loan made to an Eligible Small Business Concern without prior written consent from the AA/CA or designee.

V. **Recordkeeping and Reporting Requirements**

A. Maintenance of Records

The ILP Intermediary must maintain at its principal business office accurate and current financial records, including books of accounts, and all documents and supporting materials relating to the ILP Intermediary's activities in the ILP program, including files on loans made to Eligible Small Business Concerns. Records may be preserved electronically if the original is available for retrieval within 15 calendar days.

B. Reporting Requirements

1. Electronic reporting via the Intermediary Lending Program Electronic Reporting System (ILPERS)

ILP Intermediaries are required to report ILP loan activity to SBA via ILPERS, a web-enabled system that is accessed through the [General Login System \(GLS\)](#). ILP Intermediaries that do not yet have a GLS User ID and Password, must first go to the GLS website, click on the link "Request SBA User ID," and follow the on-screen instructions.

Once access to GLS has been granted, ILP Intermediaries must request access to the ILPERS application. To request access, login to GLS and then select the "Access" link at the top of the webpage. Then, scroll to "**Intermediary Lending Program Electronic Reporting System**," select the box next to this entry, and then select "Submit" at the bottom of the page. ILP Intermediaries will receive an email once access has been granted.

Through ILPERS, ILP Intermediaries will submit Portfolio Identification Reports and Portfolio Status Reports, as described below.

a) Portfolio Identification Reports – *Intermittent Submissions*

All loans made by the ILP Intermediary to Eligible Small Business Concerns under this program must be entered into ILPERS within seven calendar days of closing the loan. Portfolio Identification Reports include information on the small business borrower, such as demographic information, and details regarding the small business loan, such as loan size, use of proceeds, and rates and terms. This information is used to report to Congress on the progress of the program as well as for program management purposes.

b) Portfolio Status Reports – *Quarterly Submission*

By the 30th calendar day following the end of each calendar quarter, each ILP Intermediary must submit a Portfolio Status Report via ILPERS to update the payment status and outstanding principal balances of its loans to Eligible Small Business Concerns. The reporting schedule is as follows: (i) January 30 for the quarter ending December 31; (ii) April 30 for the quarter ending March 31; (iii) July 30 for the quarter ending June 30; and (iv) October 30 for the quarter ending September 30.

When a loan to an Eligible Small Business Concern is identified by the ILP Intermediary as paid-in-full or charged-off, the ILP Intermediary will be prompted to provide information on outcome measures. This information is necessary for SBA to measure the performance of the ILP program. SBA encourages the ILP Intermediary to submit such information to the extent that it is available. The questions on outcome measures include:

- i. Is the Eligible Small Business Concern still in existence at end of loan period?
(yes/no)
- ii. Number of existing FTEs
- iii. Annual gross revenues for most recently completed fiscal year
- iv. Net profit/loss for most recently completed fiscal year

2. ILP Program Activities Report – *Quarterly Submission*

By the 30th calendar day following the end of each calendar quarter, each ILP Intermediary must electronically submit through ILPERS an ILP Program Activities Report with accompanying bank statements for the RFA and LLRA to demonstrate the use and management of ILP program funds. The reporting schedule is as follows: (i) January 30 for the quarter ending December 31; (ii) April 30 for the quarter ending March 31; (iii) July 30 for the quarter ending June 30; and (iv) October 30 for the quarter ending September 30.

The ILP Program Activities Report requires the ILP Intermediary to detail the source and use of funds within its RFA and its LLRA.

3. Audited Financial Statements – *Annual Submission*

Within four months after the close of the ILP Intermediary's fiscal year, the ILP Intermediary must submit to SBA audited financial statements as prepared by an independent certified public accountant, except that ILP Intermediaries subject to OMB Circular A-133 must submit audits prepared in accordance with that circular. If an ILP Intermediary has any questions concerning this requirement it should contact its Financial Analyst in the Microenterprise Development Branch for clarification.

Audited Financial Statements should be submitted to SBA to the attention of the Chief, Microenterprise Development Branch.

4. Reports of Changes – *Intermittent Submission*

Within 30 calendar days of a change, the ILP Intermediary must submit to SBA a summary of any changes in the ILP Intermediary's organization or financing. Reports of Changes should be submitted to SBA to the attention of the Chief, Microenterprise Development Branch.

Such changes include:

- a) Any change in the intermediary's name, address or telephone number;
- b) Any change in its charter, bylaws, or its officers or directors (changes in officers or directors must be accompanied by SBA Form 1081, Statement of Personal History for each new officer or director. SBA may request a copy of the revised charter or bylaws);
- c) Any material change in capitalization or financial condition;
- d) Any change affecting the ILP Intermediary's eligibility to continue to participate in the ILP program; and

- e) Any change in the ILP Intermediary's policies or procedures for underwriting, closing, servicing, or liquidation that have not previously been disclosed to SBA.

VI. SBA Oversight

A. General

SBA's oversight of the ILP program is designed to maximize efficiency by effectively managing program credit risk, monitoring ILP Intermediary performance, and enforcing ILP Program Requirements to ensure the long-term viability of the ILP Relending Funds. The monitoring and oversight activity is also meant to promote responsible credit gap lending to support the mission of serving Eligible Small Business Concerns that would otherwise not be able to obtain credit elsewhere.

An integral part of overseeing the ILP program is SBA's authority to supervise and take enforcement actions as necessary. The regulations at 13 CFR 109.500 through 109.530 apply. If the ILP Intermediary does not comply with the ILP Program Requirements, it may form the basis of a supervisory or enforcement action as described in the regulations.

B. On-site and Off-site Reviews

ILP Intermediaries will be monitored both for performance and other risk characteristics as well as for compliance with the ILP Program Requirements. As part of its oversight activities, SBA may conduct off-site reviews and monitoring of ILP Intermediaries. SBA may also perform on-site reviews of ILP Intermediaries as needed, as determined by SBA in its discretion. SBA may require the ILP Intermediary to take corrective actions to address findings from on-site reviews, off-site reviews, or quarterly monitoring. Failure to take required corrective actions may constitute an event of default, as described in 13 CFR § 109.520.

C. Review of Loans

SBA will periodically review loans made by the ILP Intermediary after approval of the loan by the ILP Intermediary as part of the on-site and off-site reviews described above. If SBA discovers that the ILP Intermediary has made a loan under this program to an ineligible business or for an ineligible purpose, SBA will require the ILP Intermediary to refinance the ineligible loan with non-ILP program funds and to deposit into its ILP Relending Fund an amount equal to the outstanding principal balance on the ineligible loan.

VII. Forms and Resources Glossary

ILP Forms & Resources	
Form	Document
<u>2417</u>	<u>Application for Selection</u>
<u>2420</u>	<u>Resolution of the Board of Directors</u>
<u>1081</u>	<u>Statement of Personal History</u>
	Loan Authorization and Agreement
	Note
<u>1623</u>	<u>Certification Regarding Debarment (Primary Tier)</u>
<u>1711</u>	<u>Certification for Lobbying</u>
<u>SF 3881</u>	<u>ACH Vendor/Miscellaneous Payment Enrollment Form</u>
<u>SF 5510</u>	<u>Authorization Agreement for Preauthorized Payments</u>
<u>LLL</u>	<u>Disclosure of Lobbying Activities</u>
<u>2418</u>	<u>ILP Program Activities Report</u> (electronic report)
<u>2419</u>	Portfolio Identification Report and Portfolio Status Report via <u>ILPERS</u> (electronic reports)
<u>1624</u>	<u>Certification Regarding Debarment & Suspension (Lower Tier)</u>
	<u>13 CFR Part 109</u>
	<u>OMB Circular A-133</u>

Comments, questions, and reporting requirement submissions should be directed to the Chief, Microenterprise Development Branch:

U.S. Small Business Administration
Chief, Microenterprise Development Branch
409 Third Street, S.W., Suite 8200
Washington, D.C. 20416
Phone: (202) 205-6485

VIII. Definitions Glossary

Affiliate has the meaning set forth in § 121.103 of title 13 of the Code of Federal Regulations.

Associate

(1) An Associate of an ILP Intermediary is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the ILP Intermediary or its debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraph (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent;

(2) An Associate of an Eligible Small Business Concern is:

(i) An officer, director, owner of more than 20 percent of the equity, or key employee of the Eligible Small Business Concern;

(ii) Any entity in which one or more individuals referred to in paragraph (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (SBIC) licensed by SBA).

(3) For the purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the ILP Note or the loan to the Eligible Small Business Concern is outstanding:

(i) For an ILP Intermediary, the date of the ILP Note;

(ii) For an Eligible Small Business Concern, the date of the loan application to the ILP Intermediary.

Close Relative is a spouse; a parent; a child or sibling, or the spouse of any such person.

Eligible Small Business Concern is a small business that meets the requirements of § 109.400.

ILP Intermediary means a private, nonprofit entity that has applied for and been selected by SBA to receive an ILP Loan through the competitive application process described in 13 CFR Part 109.

ILP Loan means a direct loan made by SBA to an ILP Intermediary under this program.

ILP Loan Loss Reserve Account (LLRA) means a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution which includes, at a minimum, 5 percent of the outstanding principal balance of all outstanding loans to Eligible Small Business Concerns.

ILP Note means the instrument that represents the obligation of the ILP Intermediary to repay the ILP Loan to SBA.

ILP Program Activities Report means SBA Form 2418, the quarterly report that identifies the use and management of ILP program funds.

ILP Program Requirements are requirements imposed upon an ILP Intermediary by statute, SBA regulations, any agreement executed between SBA and the ILP Intermediary, SBA SOP's, SBA procedural guidance, official SBA notices and forms applicable to the ILP program, any NOFA applicable to the ILP program, and the ILP Note and Loan Authorization, as such requirements are issued and revised by SBA from time to time.

ILP Relending Fund means a federally insured depository account established by the ILP Intermediary at a well-capitalized financial institution which includes, at a minimum, the ILP Loan proceeds and the principal portion of repayments from Eligible Small Business Concerns.

Insured Depository Institution means a financial institution such as a Bank, Savings and Loan, or Credit Union which is insured by the Federal Depository Insurance Corporation (FDIC) as defined in subsection (3) of the Federal Deposit Insurance Act, 12 U.S.C.1813(c), or by the National Credit Union Administration (NCUA).

Intermediary Lending Program Electronic Reporting System (ILPERS) means the web-based, electronic reporting system used by the ILP Intermediary to report each loan made to Eligible Small Business Concerns, to provide aging information on each loan, and to update the outstanding principal balance of each loan until all loans are either paid in full or charged off.

Native American Tribal Government means the governing body of any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans.

Portfolio Identification Report means the electronic report that collects identifying information on loans made to Eligible Small Business Concerns, including demographic information, use of proceeds, payment terms, and jobs created and retained.

Portfolio Status Report means the quarterly electronic report that summarizes the payment status and outstanding principal balances of an ILP Intermediary's loans to Eligible Small Business Concerns.