

## November 2010 Wisconsin Bankers

### **The Small Business Jobs Act of 2010 – Its Impact on SBA Lending Programs and Small Business**

On September 27, 2010, the President signed into law HR 5297, The Small business Jobs Act of 2010. The legislation, which should have a significant impact on lending to small businesses includes:

- Enhancements to the SBA 7(a) and SBA 504 loan programs.
- \$12 billion in tax credits provided to small business.
- Special \$30 billion fund to encourage lending to small business (not addressed in this article)

There are numerous short term and long term enhancements to the both the SBA programs, which should help small business and the lending community. In the short term, the federal payment for 7(a) guarantee fees and 504 fees, and the 90% guaranty on 7(a) loans, have been extended until December 31, 2010 or until the \$505 million in appropriations is obligated. This is an extension of ARRA, which was instrumental in significantly increasing SBA lending in 2009 and the spring of 2010. Lenders were able to help mitigate risk with the increased guarantee and/or subordinated debt and borrowers benefitted from greatly reduced fees and low long term fixed interest rates from 504 funding.

The lending ceiling for the SBA 7(a) and SBA 504 loans will be permanently increased and the SBAExpress ceiling will be increased for 1 year.

- **7(a) Loans** - \$5 million maximum loan amount resulting in a maximum SBA guaranty of \$3.75 million. During the extension of the 90% guarantee, the maximum SBA guaranty will be \$4.50 million.
- **504 Loans** - \$5 million maximum subordinate position, except manufacturer loans and energy loans will have a higher limit of \$5.5 million. For example, a manufacturer could obtain \$13.75 million in project financing with the SBA 504 subordinate financing totaling \$5.5 million or 40% of the project cost.
- **SBAExpress Loans** – For one year, the maximum loan amount has been increased from \$350,000 to \$1 million. Resulting in a maximum SBA guaranty of \$500,000.

For the SBA 7(a) program, the temporary ability to use the SBA 504 size standard as an alternative has been made permanent. An additional enhancement is that the SBA 504 size standards were permanently increased. The maximum tangible net worth has been increased to \$15 million (previously \$8.5 million) and the 2-year average net income after Federal income tax has been increased to \$5 million (previously \$3 million). These changes significantly increase the number of businesses will be able to access funds with a guaranteed term in line with the life of the assets being financed. Lenders will now be able to use these effective credit enhancement programs with many more of their customers.

**Expansion of SBA 504 Refinance:** A 2 year provision, included in the legislation, will allow businesses with current real estate mortgages to refinance using the SBA 504 financing structure. While it may take some time for SBA to issue the related administrative regulations, here are some of the details outlined in the legislation.

- The amount that may be refinanced is limited to 90% of the property's appraised value. If a building has an appraised fair market value of \$1 million, the refinancing is limited to \$900,000. The normal structure would be \$500,000 (50%) for the lender and \$400,000 (40%) for WBD. The Borrower's Contribution of \$100,000 (10%) would not require cash since it is coming from the equity in the building.
- If the loan amount exceeds 90% of the property value, but is less than 125% of the property value, the borrower can either reduce the loan amount or pledge additional collateral to achieve the 90% LTV.
- If the loan amount is less than 90% of the appraised value, the borrower may "cash out" some of the equity in the asset, up to 90% of the value. For example, if the \$1 million building has a mortgage of \$600,000, the borrower can obtain a \$900,000 504, pay off its existing mortgage and have \$300,000 of additional funds. While "cash out" must be used for business purposes, its use is not restricted to fixed assets but could be used to pay off shorter term debts and/or payables, purchase inventory, etc.

- The debt to be refinanced must be at least two years old; cannot have been obtained under a Federal guarantee (cannot refinance an old 504, 7(a) or B&I loan); was obtained to acquire 504 eligible fixed assets; and has been current for at least twelve months.
- No new job creation is required to receive a refinance 504 loan. However, for each \$65,000 of 504 financing, the business must have one employee. For example, if the SBA 504 portion of the refinancing is \$650,000, the business must have ten full time employees/equivalents.
- The refinancing rules will include the larger debenture size and the larger size eligibility standards.
- The refinance authority will expire 24 months after the date the bill is signed into law, 9/27/2012.
- SBA will issue regulations with their interpretations of the law, which may differ from the above examples (or may not), and it is likely that no applications for refinancing will be accepted by the agency pending issuance of those rules.

**\$12 Billion in Tax Credits:** It should be noted that this provision includes expensing and other fast depreciation options that will benefit many of your small businesses customers. It should also be noted that there are deadline considerations in order to maximize the tax benefits that they would receive.

In conclusion, the Small Business Jobs Act of 2010 contains some of the most significant and positive changes to the SBA 7(a) and 504 loan programs that we have seen in years. On a long term basis, it greatly expands the number of businesses that can now access the benefits of these programs and markedly increases the size of both 7(a) and 504 loans. The 2 year expansion of the 504 program into the realm of refinance is a much needed step in addressing the growing difficulty of refinancing commercial real estate through conventional means. The short term waiver of fee and increases in the guaranty percentage and size of SBAExpress loans will all help to address short term needs and to continue to prime the pump. But it is the permanent changes that will help the programs remain viable in the years to come.