

Memo 1995-2                      Export-Import Bank Assignment

TO:                      Memo Book  
FROM:                  Sonya Allen, Staff Attorney  
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**ISSUE:**              Does a borrower's assignment of insurance policies issued by the Export-Import Bank of the United States fall within K.S.A. 9-1104 (d)(1) and qualify for exclusion from the bank's legal lending limit?

K.S.A. 9-1104, as amended, establishes legal lending limits for banks and also provides some exceptions from those limits. Paragraph (d)(1) provides:

"...That portion of a loan which is continuously secured on a dollar for dollar basis by any of the following will be exempt from any lending limit:  
(1) A guaranty, commitment, or agreement to take over or to purchase, made by any federal reserve bank or by any department, bureau, board, commission, agency, or establishment of the United States of America, including any corporation wholly owned, directly or indirectly by the United States"

Insurance policies purchased through Ex-Im Bank, cover receivables a borrower may use as collateral for a loan. An agreement to assign an Ex-Im Bank insurance policy would qualify for exclusion pursuant to paragraph (d)(1) of 9-1104 as equivalent to a guaranty made by the United States if all of the following factors are present:

1. The borrower has a loan with the bank and has pledged receivables as collateral.
2. The borrower has obtained export credit insurance on those receivables through the Export-Import Bank of the United States.
3. The transaction is one which qualifies for the type of insurance policy Assignment Agreement that includes a "hold harmless" clause (Assignment forms EIB-92-53, Assignment for the Small Business and Small Business Environmental Policies; or EIB-92-75, Assignment for the Umbrella Policy).
4. That Assignment Agreement has been executed in favor of the bank.

**EXPLANATION:**

The "hold harmless" clause is a clause which says that Ex-Im Bank agrees to pay valid claims to the assignee (which would be the lender bank) notwithstanding provisions of the policy that would otherwise provide the basis for denial of the claim to the insured (the borrower/exporter). Cathie Schneider at Ex-Im Bank, Houston Division, said that a bank which is assigned a policy with such a clause would be protected from losses that result from simple default of the borrower. In other words, the bank would be covered if the "borrower skipped town without paying". This was confirmed by Peter J. Vatter, Deputy Vice President of the Claims and Recoveries Division at Ex-Im Bank in Washington, D.C. The assignment forms which contain the "hold harmless" clauses are only available for certain small business transactions, and Ex-Im Bank determines which types of transactions qualify to use them.

**SUMMARY:**

So long as the transaction is one which qualifies for the type of insurance policy Assignment Agreement that includes what Ex-Im Bank calls a "hold harmless" clause, and that Assignment Agreement has been executed in favor of the bank, the amount of coverage

provided by the Ex-Im Bank insurance policy shall be excluded from the calculation of the bank's legal lending limit pursuant to the paragraph (d)(1) of 9-1104 as similar to a guaranty made by the United States.