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Export-Import Bank: Legislative Mandate for Small Business

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Summary

The Export-Import Bank is the chief U.S. government agency that helps finance American exports of manufactured goods.¹ As part of its legislative mandate, Congress has directed the Bank to promote exports of small business concerns and to protect U.S. businesses, including small businesses, from some of the potentially negative economic effects that can arise from such export promotion activities. The 107th Congress directed the Bank to focus its attention in particular on certain types of small business concerns, including those that are socially and economically disadvantaged or owned by women. This report will be updated as events warrant.

The Export-Import Bank (Eximbank) is an independent U.S. government agency that is charged with financing and promoting exports of U.S. manufactured goods and services. Through various legislative measures, Congress has directed the Bank in general and specific terms to reach out to U.S. small business operators by making its programs accessible to small business owners and by restricting its support for transactions that might have a potentially negative impact on U.S. business, including small business concerns. This report provides an overview of the specific mandates Congress has placed on the Bank to support small business, general requirements to limit any negative economic impact on U.S. jobs and businesses, and a description of the Bank's response to these mandates, especially regarding small business.

Congressional Small Business Concerns

Beginning in 1975, Congress has taken an interest in the way the Export-Import Bank (Eximbank) supports small business and directed that of the five members of the Bank's Board of Directors not less than one should be selected from among the small business community and represent the interests of small businesses.² Furthermore,

¹ For additional information, see the Bank's Internet address: [<http://www.exim.gov>]

² 12 USC 635a (c)(8)(B); provision was first added in P.L. 93-646, Export-Import Bank (continued...)

Congress has directed the Bank to work with the Department of Commerce and the Small Business Administration to develop a program to disseminate information about the Bank's medium-term financing program to small business concerns.³ Congress also directed that the terms and conditions set by the Bank should make its loans fully competitive with terms set by other countries in order to neutralize the effect of foreign official credit on international sales competition for all firms, including small business.⁴ In 1983, through P.L. 98-181, Congress directed that three of the Bank's Advisory Committee represent the small business community.⁵ Congress also expanded on a previous directive to the Bank to "aid, counsel, assist, and protect" the interests of small business, and directed the Bank to:

- As a matter of policy encourage the participation of small business in international commerce.⁶
- Develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.⁷
- Aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise.⁸
- Designate an officer of the Bank who is responsible to the President of the Bank for all matters concerning or affecting small business concerns.⁹ Have this director ensure that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs and that not less than 6% of the Bank's aggregate loan, guarantee, and insurance authority is available to finance exports directly by small business concerns.¹⁰

² (...continued)

Amendments of 1974.

³ 12 USC Sec 635 (a)(2)(B)

⁴ 12 USC Sec 635 (b)(1)(B)

⁵ 12 USC 635a (d)(2)(A)

⁶ 12 USC Sec 635 (b)(1)(E)(i)(I)

⁷ 12 USC Sec 635 (b)(1)(E)(i)(II)

⁸ 12 USC Sec 635 (b)(1)(E)(ii)

⁹ 12 USC Sec 635 (b)(1)(E)(iii)(I)

¹⁰ 12 USC Sec 635 (b)(1)(E)(iv) and (v); P.L. 98-181 provided for a graduated increase from 6% in 1984 to 10% in 1986. Amended by P.L. 102-429, Export Enhancement Act of 1992, which set the share at not less than 10%. P.L. 107-189, the Export-Import Bank Reauthorization Act of 2002 raised the share to not less than 20%.

- Offer financing for small business exports on terms which are fully competitive with regard to interest rates and without regard to a disapproval by any other Federal agency.¹¹
- Utilize a part of the amount set aside to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies, or other financing institutions or entities in order to finance small business exports.¹²
- Promote small business exports and small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies, and private industry.¹³
- Urge the Foreign Credit Insurance Association to provide coverage against 100% of any loss for exports valued at less than \$100,000.¹⁴
- Inform high technology companies, particularly small business concerns, about the programs of the Bank for U.S. companies interested in exporting high technology goods to countries making the transition to market based economies, including any eligible East European country.¹⁵
- And to undertake efforts to enhance the Bank's capacity to provide information about the Bank's programs to small and rural companies which have not previously participated in the Bank's programs.¹⁶

In 2002, through P.L. 107-189, Congress directed the Bank to give particular attention to certain types of small business concerns. In addressing the needs of these small businesses, Congress directed the Bank to set aside not less than 20% of its aggregate authority for small business and to conduct "outreach and increasing loans to socially and economically disadvantaged small business concerns, small business concerns owned by women, and small business concerns employing fewer than 100 employees, and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns."¹⁷

Congress also requires the Bank to submit an annual report detailing its efforts to involve small businesses. These reports are required to:

¹¹ 12 USC Sec 635 (b)(1)(E)(vi)

¹² 12 USC Sec 635 (b)(1)(E)(vii)(I)

¹³ 12 USC Sec 635 (b)(1)(E)(viii)

¹⁴ 12 USC Sec 635 (b)(1)(F)

¹⁵ 12 USC Sec 635 (b)(1)(H)(iii)

¹⁶ 12 USC Sec 635 (b)(1)(I)

¹⁷ 12 USC Sec 635 (b)(1)(E)(iii)(II)

- Indicate the allocation of the sums set aside for small business exports, including the total number and dollar volume of loans made from the sums available to small business and the number and dollar volume of loans made through the consortia program. The amount of guarantees and insurance provided for small business exports; the number of recipients who had not previously participated in the Bank’s programs; the number of commitments entered into in amounts less than \$500,000; and any recommendations for increasing the participation of banks and other institutions.¹⁸
- Be sent to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.¹⁹
- Report on the efforts by the Bank to provide technology to assist small businesses.²⁰
- Estimate the number of entities that are suppliers or users of the Bank that are small business concerns.²¹
- Include a description of outreach efforts made by the Bank to any socially and economically disadvantaged small business concerns, small business concerns owned by women, and small business concerns employing fewer than 100 employees.²²

U.S. Production and Employment

As early as 1968, Congress expressed its concerns that Eximbank’s activities not have a negative impact on U.S. producers and U.S. jobs. In that year, Congress directed the Bank through P.L. 90-267²³ to require the Bank’s Board of Directors to consider “any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States,” as a precondition for receiving Eximbank’s support. In 1971, Congress expanded on this role by specifying that the policy objective of the Bank is to enhance U.S. jobs and incomes. Through P.L. 92-126²⁴ Congress directed:

It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income, a

¹⁸ 12 USC Sec. 635g(b)(1) - (2)

¹⁹ 12 USC Sec. 635g(b)(3)

²⁰ 12 USC Sec. 635g(c)

²¹ 12 USC Sec. 635g(d)

²² 12 USC Sec. 635g

²³ *Ibid.*

²⁴ 12 USC Sec. 635(b)(1)(A)

commitment to reinvestment and job creation, and the increased development of the productive resources of the United States.

In 1978, Congress restated this role in P.L. 95-630, which amended 12 USC Sec. 635(b)(1)(B) to include the requirement that the Bank emphasize “the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports.” At the same time, Congress also added section 12 USC Sec. 635a-2, which directed the Bank to implement regulations and procedures to assess the impact of the Bank’s programs on U.S. industries and employment by reducing demand for U.S.-made goods, or by increasing imports and to request the International Trade Commission to assess the impact of the Bank’s programs:

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank’s activities on industries and employment in the United States.

In addition, in 1986, Congress required the Bank not to extend any credit or guarantee if:

- (i) the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; or
- (ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and
- (B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.²⁵

In 2002, Congress emphasized again the importance of U.S. employment in the Bank’s hierarchy of purposes. Through P.L. 107-189, which amended 12 USC Sec. 635(a)(1), Congress indicated that the “objects and purposes” of the Bank’s programs are to “contribute to the employment of United States workers.” In stating this objective even more explicitly, Congress directed that,

The Bank’s objective in authorizing loans, guarantees, insurance, and credits shall be to contribute to maintaining or increasing employment of United States workers.

Congress also requires the Bank to make an assessment of both the short- and long-term economic costs and benefits of the effects of its programs. It acknowledged that at times, the short-run displacement of firms and workers might be justified by the long-run benefits to the economy as a whole. As a result, Congress indicated that the restrictions specified in the preceding section need not apply when:

in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the

²⁵ P.L. 99-472 [12 USC 635(e)]

short- and long-term injury to United States producers and employment of the same, similar, or competing commodity.²⁶

Eximbank's Small Business Congressional Mandate

The Export-Import Bank has established a number of programs that it believes satisfies its Congressional mandate to reach out to small businesses. In fact, the Bank claims that over 80% of its annual transactions support small businesses directly and indirectly through its programs, including its working capital guarantee and export credit insurance programs. The Bank argues that these two programs help small businesses reduce the risks involved in export financing. The Bank also contends that its short-term insurance policies assist small business exports by protecting an exporter against non-payment by their foreign buyers due to both commercial (insolvency, bankruptcy and default) and political risks (war, revolution, transfer risk) and also allows exporters to extend competitive credit terms to their foreign buyers.

According to the Bank's 2004 annual report,²⁷ the Bank offered direct support to small business exporters of \$2.2 billion, or nearly 17%, of the Bank's total authorizations in FY2004. The Bank also approved 2,572 small business transactions that represented about 83% of the Bank's total of 3,107 export transactions. Additionally, the Bank estimates that the total value of its indirect support for small business concerns in FY2004 through long-term transactions where small businesses serve as suppliers to larger primary exporters was \$906 million out of a total export value of \$7.9 billion, or about 11% of the total export value of the Bank's long-term financing. Small businesses also accounted for 82%, or 378, of the Bank's working capital guarantee transactions, representing more than \$620 million. Small businesses also accounted for 91% of the export credit insurance policies authorized by the Bank, totaling \$1.6 billion, or 35% of the total value of such authorizations.

The Bank reports that it has improved access for small businesses to its programs through such technology improvements, as placing its applications and forms on its website. The Bank also participates with other agencies in the Trade Promotion Coordinating Council (TPCC) in the government-wide Trade Portal²⁸ that integrates the content and functions of the websites of the Bank, the Small Business Administration, and other agencies into one comprehensive site. Eximbank also reports that it employs a business development officer who is solely dedicated to providing outreach to women-owned and minority-owned businesses. The Bank also participates in a wide range of trade shows, seminars, and conferences to promote its programs to women-owned and minority-owned businesses and it sponsors seminars and symposia targeted at small businesses that traditionally have not participated in the Bank's programs.

²⁶ *Ibid.*

²⁷ Available in April 2005 at [<http://www.exim.gov/about/reports/ar/ar2004/pdf/>].

²⁸ The site is [<http://www.export.gov/>].