

CRS Report for Congress

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Export-Import Bank: Reauthorization

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Summary

The Export-Import Bank is an independent U.S. government agency that serves as the chief U.S. government agency to help finance American exports of manufactured goods. Congress exercises oversight responsibilities over the Bank in a number of ways, including extending the Bank's authority through reauthorizing legislation. Currently, Congress is considering H.R. 5068, the Export-Import Bank Reauthorization Act of 2006, which would reauthorize the Bank's charter, which is set to expire on September 30, 2006, for five years through September 30, 2011. The measure was introduced by Representative Pryce on March 30, 2006, and was sent to the House Financial Services Committee, which has jurisdiction in the House of Representatives over the Bank. The measure was approved with four amendments by the Committee on June 14, 2006 and passed the full House unanimously without amendment on July 26, 2006. In the Senate, the Committee on Banking, Housing, and Urban Affairs has jurisdiction. The Bank's current authorization is scheduled to expire on September 30, 2006.

The legislation would amend the Bank's charter in four areas. First, the measure would direct the Bank to organize a Small Business Division and would commit more of the Bank's resources to promoting and servicing exports from small business concerns, particularly those owned by socially and economically disadvantaged small business concerns and by women. Second, the measure would reauthorize the Bank's efforts to promote trade with sub-Saharan Africa. Third, the measure would make the Bank's operations more transparent. Fourth, the measure would require the Bank to take other actions and to prepare various reports to improve the Bank's relative competitive position.

This report will be updated as events warrant.

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Export-Import Bank: Reauthorization

Overview

The Export-Import Bank (Eximbank) is an independent U.S. government agency that serves as the chief U.S. government agency to help finance American exports of manufactured goods.¹ Congress has direct oversight responsibility over the Bank, which it exercises through various methods including approving the Bank's charter, extending its authority through reauthorizing legislation, annual budget appropriations, Senate confirmation of Presidential appointments to the Bank's Board of Directors and the Bank's President, requests for testimony from the Bank's President, and amendments to the Bank's governing statutes.

Congress is considering H.R. 5068, the Export-Import Bank Reauthorization Act of 2006. The measure was introduced on March 30, 2006, by Representative Pryce and sent to the House Financial Services Committee, which has jurisdiction in the House of Representatives over the Bank. The measure was approved with four amendments by the Committee on June 14, 2006. In the Senate, the Committee on Banking, Housing, and Urban Affairs has jurisdiction over the Bank. As of this date, a separate bill has not been introduced in the Senate.

H.R. 5068 would extend the Bank's charter, which is set to expire on September 30, 2006, to September 30, 2011, and amend the Bank's charter in four areas. First, the measure would direct the Bank to organize a Small Business Division, which is the first time Congress has directed the Bank to organize a specific division. In addition, the measure would commit more of the Bank's resources to promoting and servicing exports from small business concerns in general and small business concerns owned by socially and economically disadvantaged small business concerns and small business concerns owned by women in particular. Second, H.R. 5068 would reauthorize the Bank's efforts to promote trade with sub-Saharan Africa. Third, the measure would require various changes in the Bank's procedures to make the Bank's operations more transparent. Fourth, the measure would require the Bank to take other actions and to prepare various reports to improve the Bank's relative competitive position. In addition, the measure would increase the size of the Bank's Advisory Committee from 15 to 17, and would require that not less than two of the members appointed to the Advisory Committee should represent the "environmental non-governmental organization community."

Amendments accepted during a mark-up session in the House Financial Services Committee on June 14, 2006 would change the proposed legislation in four ways:

¹ For additional information, see CRS Report 98-568, *Export-Import Bank: Background and Legislative Issues*, by James K. Jackson, and the Bank's Internet address: [<http://www.exim.gov>].

- 1) An amendment offered by Subcommittee Chairman Pryce would require the Bank to provide timely notice of an application receipt; encourage the Bank to ensure that qualified minority and women applicants are considered when filling any position at the Bank; ensure the protection of sensitive information upon public disclosure of environmental reports and assessments; and establish an office on renewable energy promotion.
- 2) An amendment offered by Representative Crowley would prohibit the Bank from participating in projects to develop certain rail connections.
- 3) An amendment offered by Representative Walters would establish formal mechanisms to determine the effectiveness of the Bank's small business activities.
- 4) An amendment offered by Representative Davis would prohibit the Bank from circumventing requirements that the Bank complete an economic impact analysis on large projects by breaking the project into several small ones to avoid the dollar amount threshold that triggers an analysis.

Small Business Emphasis

Since 1975, Congress has taken an active interest in the way Eximbank supports small business.² Congress has emphasized this support by directing that not less than one of the five members of the Bank's Board of Directors should be selected from among the small business community and represent the interests of small businesses.³ Furthermore, Congress has directed the Bank to disseminate information about the Bank's medium-term financing program to small business concerns,⁴ and it has directed that the terms and conditions it offers should be fully competitive with terms set by other countries to support U.S. firms, including small business.⁵

In 1983, through P.L. 98-181, Congress provided additional support for small business by directing that three of the Bank's Advisory Committee represent the small business community.⁶ 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: 1) encourage small business;⁷ 2) give fair consideration to small

² See also CRS Report RS22091, *Export-Import Bank: Legislative Mandate for Small Business*, by James K. Jackson.

³ 12 USC 635a (c)(8)(B); provision was first added in P.L. 93-646, Export-Import Bank Amendments of 1974.

⁴ 12 USC Sec 635 (a)(2)(B)

⁵ 12 USC Sec 635 (b)(1)(B)

⁶ 12 USC 635a (d)(2)(A)

⁷ 12 USC Sec 635 (b)(1)(E)(i)(I)

business;⁸ 3) aid, counsel, assist, and protect small business concerns;⁹ 4) designate an officer of the Bank responsible for small business concerns;¹⁰ 5) ensure that 6% of the Bank's authority is available to small business concerns;¹¹ 6) offer competitive financing terms;¹² 7) 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;¹³ 8) promote small business exports and small business export financing programs;¹⁴ 9) urge the Foreign Credit Insurance Association to provide coverage against 100% of any loss for exports valued at less than \$100,000;¹⁵ 10) inform high technology small business concerns about exporting to countries in transition to market based economies;¹⁶ and 11) provide information to small and rural companies.¹⁷

In 2002, through P.L. 107-189, Congress directed the Bank to give particular attention to certain types of small business concerns and directed the Bank to set aside not less than 20% of its aggregate authority for small business. Congress also directed the Bank 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."¹⁸ Congress also required the Bank to submit an annual report detailing its efforts to involve small businesses.¹⁹

Small Business Division

H.R. 5068 would provide additional support to small business by directing the Bank to establish a Small Business Division and it would amend various sections of the current statute governing the operations of the Bank. In particular, the bill would

⁸ 12 USC Sec 635 (b)(1)(E)(i)(II)

⁹ 12 USC Sec 635 (b)(1)(E)(ii)

¹⁰ 12 USC Sec 635 (b)(1)(E)(iii)(I)

¹¹ 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%.

¹² 12 USC Sec 635 (b)(1)(E)(vi)

¹³ 12 USC Sec 635 (b)(1)(E)(vii)(I)

¹⁴ 12 USC Sec 635 (b)(1)(E)(viii)

¹⁵ 12 USC Sec 635 (b)(1)(F)

¹⁶ 12 USC Sec 635 (b)(1)(H)(iii)

¹⁷ 12 USC Sec 635 (b)(1)(I)

¹⁸ 12 USC Sec 635 (b)(1)(E)(iii)(II)

¹⁹ 12 USC Sec. 635g(b)(1) - (3), (c), (d)

remove section (iii) of 12 U.S.C. 635(b)(1)(E) that requires the Board of Directors of the Bank to designate an officer of the Bank who is responsible to the President of the Bank for all matters concerning “small business concerns.” In its place, H.R. 5068 would direct the Bank to establish a Small Business Division whose sole function would be to carry out such activities as outreach to small business, including feedback, product improvement, and transaction advocacy; advise and seek feedback from small business; and maintain liaison with the Small Business Administration. The Bank officer designated to administer the Small Business Division would be required to have “substantial experience” in financing exports by small business; have the sole duty of ensuring that the division carries out its functions for small business; advise the Board of Directors, and particularly the Director on the Board who is responsible for small business; rank no lower than a Senior Vice President;²⁰ and that the officer report directly to the President of the Bank.

To offer additional support to the Small Business Division, H.R. 5068 would require the President of the Bank to ensure that the staff and budgetary resources of the Division be devoted solely to carrying out the functions of the Small Business Division. In addition, the staff of the Division would be dedicated “exclusively” for performing outreach, training, and providing advice to, seeking feedback from, and advocating on behalf of small business concerns “regarding Bank financing opportunities, products, and programs.” In handling and processing applications of small business for programs of the Export-Import Bank, the Bank would be required to obtain the same kind of “reasonable assurance of repayment for each transaction” that the Bank is required to receive under current statute. The Bank, however, would be required to establish and maintain “transaction standards tailored to the special circumstances of small business concerns” and then use the standards to evaluate applications by small business concerns. The Bank would also be required to ensure that “each appropriate division” of the Bank has staff dedicated to the processing of transactions involving small business concerns.

Small Business Committee

H.R. 5068 would also require the Bank to establish and maintain a Small Business Committee that would focus on small business concerns and would coordinate the efforts of the Bank with respect to small business concerns. The chairman of the Committee would be the Senior Vice President of the Bank who is responsible for administering the Small Business Division. The Committee would also include officers and employees from throughout the Bank who have responsibilities that involve small business. In addition, the Committee would prepare a report for the President of the Bank. Currently, the Bank is required to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, financing cooperatives, small business investment companies to finance small business exports. H.R. 5068 would require the Bank to work in cooperation with the aforementioned entities to streamline the processing of applications for Bank financing and to provide training

²⁰ The current Bank officer who is responsible for administering the Bank’s small business programs is a Senior Vice President.

and advice on “the needs and benefits of export financing for small business concerns.”

Reports to Congress

The Bank would also be required to report annually to Congress on the fees it charges and the transactions costs it incurs through its activities with small and medium business. In particular, the Bank would be required to report on three activities. The first area is the interest and fees the Bank charges exporters, including small business concerns, for each type of Bank transaction (insurance, guarantee, direct financing) and each financing program for small business concerns, buyers, and other applicants, and the highest, lowest, and average fees charged by the Bank for short term insurance transactions. The second area of reporting would be on the effects of the fees on the ability of the Bank to achieve the objectives of the Bank relating to small business. The third area would be the fee structure of the Bank compared with that of other foreign export credit agencies.

H.R. 5068 would also require the Bank to report annually to the Congress on the following three activities:

- 1) The extent to which the Bank is able to use its authority to: develop a program which gives “fair consideration to making loans and providing guarantees for the export of goods and services” by small business; and to “aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise.” The Bank would also report on the extent to which the Bank would have been unable to utilize fully these authorities and to report on the obstacles that prevent the Bank from utilizing these authorities and on what actions the bank is taking to overcome any obstacles.
- 2) The extent to which financing is made available to small business concerns to enable them to participate in exports by major contractors, including across the supply chain of the contractors through direct or indirect financing.
- 3) A strategic plan of action describing what specific measures the Bank would take to achieve the small business objectives of the Bank, including expanded outreach, product improvements, and related actions.

H.R. 5068 would also require the President of the Bank to establish in the Small Business Division an office that would be responsible for increasing the total amount of loans, guarantees, and insurance provided by the Bank to support exports by “socially and economically disadvantaged small business concerns and small business concerns owned by women.” The bill would require the Bank to have a goal of having not less than 10 percent of the amount available for financing exports available to small business concerns and to report annually on the efforts the Bank would have taken to reach this goal.

Sub-Saharan Africa

H.R. 5068 would also require the Bank to do more to work with financial institutions in sub-Saharan Africa to improve the ability of financial institutions in

Africa to utilize the Bank's programs. H.R. 5068 would extend to 2011 the authority of the advisory committee that has been established by the Bank to promote the Bank's financial commitments to sub-Saharan Africa. The Bank would also be required to improve its working relationship with African financial institutions by having in place one year after this measure become law that there is a contract between each approved lender in Africa and the Bank which specifies the Bank's guarantee undertakings and related obligation between the Bank and the African lender.

In addition, the Bank would be required to report annually on the efforts of the Bank to improve its working relationship with the African Development Bank, the Africa Export-Import Bank, and other institutions in the region. The Bank would be required to coordinate closely with the U.S. Foreign Commercial Service and the overall strategy of the U.S. Government on economic engagement in Africa relative to the African Growth and Opportunity Act. The Bank would also be required to coordinate with the African Development Bank, the Africa Export-Import Bank, and other financial institutions to seek greater flexibility in the due-diligence procedures of the Bank in order to qualify a greater number of appropriate African entities for participation in the programs of the Bank and to develop policies that would allow the Bank to finance certain African programs in local currencies.

Eximbank Operations and Transparency

Procedures

H.R. 5068 would require the Export-Import Bank to take a number of measures to improve the transparency of the Bank's operations, including increasing requirements on the Bank to report to Congress. The Bank's Board of Directors would be required to meet at least twice a week and the Board would be required to vote within 60 days of completing an economic impact analysis whether or not to proceed with a proposed loan or guarantee. The Bank would also be required to establish a clearly defined process for handling applications. These measures would be to:

- 1) acknowledge that it has received an application for one of the Bank's programs;
- 2) inform applicants of the adequacy of the material provided and indicate any changes that might be made to make the application eligible for consideration; and
- 3) keep applicants informed of the status of the application and the reason for any disapproval.

The Bank would be required to notify applicants within 45 days of applying for a Bank program of the status of the application. In addition, the Bank would be required to establish and maintain a website through which any Bank product could be applied for and which would include information concerning the Small Business

Division of the Bank and any incentives, targets, or goals relating to small business concerns.

Reports

The Bank would be required to report to Congress within 60 days after enactment of the act on two major areas:

- 1) the Bank's efforts to provide medium-term risk protection coverage through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organization; and
- 2) the Bank's progress in implementing an electronic system designed to track all pending transactions of the Bank.

In those instances in which the Bank has been unable to comply with these two requirements, the Bank would be required to provide an analysis of the reasons why it has not been able to comply, what the Bank was doing to achieve compliance and the date by which the Bank would expect to achieve compliance, and the name of each Bank officer who would be responsible for ensuring that the Bank achieved compliance and the supervisor of such officers

Subsequent to the initial report, the Bank would be required to report annually on the Bank's efforts to carry out the two requirements listed in the preceding paragraph. The report would include the total amount the Bank expended during the fiscal year to carry out the requirements, and how the Bank's efforts were assisting small business concerns. In those instances in which the Bank had not been able to comply it would be required to provide an analysis of the reasons why it had not complied, a description of what the Bank was doing to achieve compliance, the date by which it expected to be in compliance, and the name of each Bank officer who is responsible for ensuring that the Bank is in compliance and the supervisor of the Bank officer. The Inspector General of the Export-Import Bank would be required to file a report similar to the initial report that would be required under this section.

Eximbank Competitiveness

The Bank also would be required to report more extensively on its efforts to improve the competitiveness of its programs. The bill would make a number of changes to the Bank's tied aid program that could lessen the influence of the Secretary of the Treasury on the tied aid program and could broaden the scope of the Bank's tied aid program. The bill would also raise the importance of environmental issues within the Bank by mandating the presence of officials on the Bank's Advisory Committee who would be representative of environmental concerns.

Annual Reports to Congress

The Bank would be required to report annually to Congress on the Bank's efforts to be competitive with other foreign official export credit agencies in two

major areas. First, the Bank would be required to report on its mandate to “provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters.” Second, the Bank would be required to report on its efforts to work in “cooperation with the export financing instrumentalities of other governments” and to “seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing.”

In addition to reporting on the actions the Bank would have taken to comply with the two aforementioned requirements, the Bank would be required to include a survey of all major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters. The Bank would be required to report in specific terms on the ways in which the Bank’s rates, terms, and other conditions compared with those offered directly or indirectly by other governments. The Bank would also be required to include a survey of U.S. exporters and U.S. commercial lending institutions that provide export credits to determine the experience of the exporters and institutions in meeting financial competition from other countries whose exporters compete with U.S. exporters.

The Bank also would be required to report on:

- 1) The role of the Bank in implementing the strategic plan prepared by the Trade Promotion Coordinating Committee.
- 2) The tied aid credit program of the Bank, including a description of the implementation of the OECD Arrangement on Guidelines for Officially Supported Export Credits, all principal offers of tied aid financing by foreign countries, offers grandfathered under the Arrangement, notifications of exceptions, any use by the Bank of tied aid funds, and other actions by the U.S. Government to combat predatory financing practices by foreign governments.
- 3) A description of all Bank transactions classified according to their principle purpose.
- 4) Efforts of the Bank to promote exports of goods and services that are related to sources of renewable energy.
- 5) The size of the Bank’s program account compared with that of other major export-financing facilities of foreign governments. The bank would also be required to offer recommendations relative to the size of the Bank’s program account, including an assessment of the merits of the size of the accounts and the impact on the “best interests” of the U.S. taxpayer.
- 6) The co-financing programs of other major export-financing facilities and include a list of which countries have a memorandum with the United States relating to export credit agency co-financing and an explanation of why such a memorandum is not in effect with other countries.

7) The Bank's participation in providing funding, guarantees, or insurance for after-market services, including information on the involvement of other major export-financing facilities in providing such support and an explanation of any differences among the facilities in providing this support.

8) Detailed information on cases of export financing that are not in compliance with the OECD Arrangement on Guidelines for Officially Supported Export Credits, or that exploit loopholes in the Arrangement for the purpose of obtaining a competitive commercial advantage.

9) A description of the extent to which the activities of foreign export credit agencies are not in compliance with the OECD Arrangement and the WTO Agreement on Subsidies and Countervailing Measures.

The Bank would be required to have the Board of Directors approve and sign each report required by this section of H.R. 5068. The reports would also be required to include dissenting views. The Bank also would be required to include in its annual report to Congress information on and analysis of regional multi-buyer insurance programs and working capital guarantee programs operated by the Bank and the effectiveness of the programs overall and the effectiveness of the programs in increasing export-related jobs in the United States. In addition, the Bank would be required to report on the size of similar programs of other major export-financing facilities available from other governments and a detailed explanation of the working relationship between the Bank and the Small Business Administration, the Department of Commerce, and other U.S. Government agencies that are concerned with increasing the number of export-related jobs in the United States.

Tied Aid

The Bank's current statute authorizing the tied aid fund would be amended to authorize the use of tied aid credits against countries that are not a party to the OECD Arrangement. In addition, the Bank would no longer be required to consult with the Secretary of the Treasury in operating the tied aid fund. In those cases where information about a specific offer of tied aid is not available, the Bank would be free to use the Tied Aid Credit Fund based on "credible evidence" of a history of such offers under similar circumstances or other forms of credible evidence. The President of the United States would be required to notify Congress within 30 days of the Bank's determination to use the tied Aid Credit Fund under these circumstances.

Furthermore, in order to improve the competitiveness of its programs, the Bank would be required to establish a mixed credits program that would consist of longer term financing and other forms of more flexible repayment terms, financing of transactions in local currencies, and other forms of concessional financing that meets the needs of the product sector and the foreign markets involved, while also conforming to the OECD Arrangement and in consultation with U.S. Government agencies and appropriate multilateral institutions.

H.R. 5068 also would provide guidance from the Congress to the Secretary of the Treasury regarding negotiations on the OECD Arrangement. In particular, the Secretary would be required to inform the other participants to the negotiations that

the U.S. goals would be to: 1) seek compliance with the Arrangement among countries with significant export credit programs that are not parties to the Arrangement; 2) identify within the World Trade Organization the extent to which countries that are not a party to the WTO Agreement on Subsidies and Countervailing Measures are not in compliance with the terms of the Arrangement; and 3) implement new disciplines on the use of untied aid, market windows, and other forms of exports finance that seek to exploit loopholes in the Arrangement.