

CRS Report for Congress

Export-Import Bank Reauthorization: Comparison of H.R. 5068 and S. 3938

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Export-Import Bank Reauthorization: Comparison of H.R. 5068 and S. 3938

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. The 109th Congress considered **H.R. 5068** and **S. 3938**, both titled the Export-Import Bank Reauthorization Act of 2006, which would reauthorize the Bank's charter for five years through September 30, 2011. The House 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, S. 3938 was introduced September 26, 2006 by Senator Crapo and sent to the Committee on Banking, Housing, and Urban Affairs, which has jurisdiction. The measure passed the Senate with an amendment by unanimous consent on September 30, 2006. As of this date, Eximbank's appropriations are continuing under P.L. 109-289 (H.R. 5631) as amended by **P.L. 109-369** and **P.L. 109-383**. On December 6, 2006, the House approved **S. 3938** in lieu of **H.R. 5068** to reauthorize the Bank's authority through September 30, 2011. The measure was signed by Bush on December 20, 2006, and was designated **P.L. 109-438**.

The two measures amended the Bank's charter in a number of areas. Both the House and Senate measures extended the Bank's authority to September 30, 2011, and they directed the Bank to organize permanently a Small Business Division. The measures commit more of the Bank's resources to promoting and servicing exports from small business concerns. Both measures reauthorize the Bank's efforts to promote trade with sub-Saharan Africa. Both measures also amend, although in very different ways, the Bank's current statutes regarding the offering of tied aid credits to U.S. exporters.

H.R. 5068 would have made the Bank's operations more transparent and it would have required the Bank to take other actions and to prepare various reports to improve the Bank's relative competitive position. Furthermore, H.R. 5068 would have authorized an office within the Bank to increase the total amount of loans and guarantees that go to support exports by "socially and economically disadvantaged small business concerns and small business concerns owned by women." The measure also would have provided for a number of changes to improve the competitiveness of the Bank's programs, directed the Bank to study how it can assist new or impoverished democracies, and provided greater assistance to exports involving renewable energy. S. 3938 directs the Bank to submit annually to Congress a list of U.S. commercial sectors and products that would suffer "adverse economic impact" due to Eximbank support of projects abroad.

This report provides a side-by-side comparison of the two bills. It will be updated as warranted by events.

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Export-Import Bank Reauthorization: Comparison of H.R. 5068 and S. 3938

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.

Eximbank has three main programs it uses to finance U.S. exports: direct loans, export credit guarantees, and export credit insurance. Prior to 1980, the Bank's direct lending program was its chief financing vehicle, which it used to finance such capital-intensive exports as commercial aircraft and nuclear power plants. Both the budget authority requested by the Administration and the limitation approved by the Congress for the Bank's direct lending were sharply curtailed during the 1980s and 1990s.

Eximbank's direct lending program is used primarily to aid U.S. exporters in instances where they face a foreign competitor that is receiving officially subsidized financing by a foreign government. These loans carry fixed interest rates and generally are made at terms that are the most attractive allowed under the provisions of international agreements. They are made primarily to counter attempts by foreign governments to sway purchases in favor of their exporters solely on the basis of subsidized financing, rather than on market conditions (price, quality, etc.), and to enforce internationally agreed upon terms and conditions for export financing. The Bank also has an Intermediary Credit Program it uses to offer medium- and long-term fixed-rate financing to buyers of U.S. exports, but U.S. exporters also must face officially subsidized foreign competition to qualify for this program.

As part of its direct lending program, the Bank has a tied aid "war chest" it uses to counter specific projects that are receiving foreign officially subsidized export financing. Tied aid credits and mixed credits are two of the primary methods whereby governments provide their exporters with official assistance to promote exports. Tied aid credits include loans and grants which reduce financing costs

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>].

below market rates for exporters and which are tied to the procurement of goods and services from the donor country. Mixed credits combine concessional government financing (funds at below market rates or terms) with commercial or near-commercial funds to produce an overall rate that is lower than market-based interest rates and carries more lenient loan terms. The United States does tie substantial amounts of its agricultural and military aid to U.S. goods, but it generally has avoided using such financing to promote American capital goods exports.

Guarantees and insurance are the main programs the Bank uses to assist American exporters. Both programs reduce some of the risks involved in exporting by insuring against commercial or political uncertainty. There is an important distinction, however, between the two programs. Insurance coverage carries with it various conditions that must be met by the insured before the Bank will pay off a claim. A guarantee is an ironclad commitment made to a commercial bank by the Export-Import Bank that promises full repayment with few, if any, conditions attached. In addition, Eximbank has a Working Capital Guarantee Program that it uses to aid small- and medium-sized businesses. Businesses that qualify have exporting potential but need working capital funds to produce or market their goods or services for export. Guarantees are offered to qualified lenders (primarily commercial banks) in order to facilitate loans to small businesses. In FY2005, the Bank authorized \$13.94 billion in loans and guarantees to support an estimated \$17.86 billion in U.S. exports. According to the Bank, this represents 3,128 transactions of which 80 percent directly benefitted small business.

Overview of H.R. 5068 and S. 3938

The 109th Congress considered H.R. 5068 and S. 3938, both identified as the Export-Import Bank Reauthorization Act of 2006. H.R. 5068 was introduced in the House 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 and passed the full House unanimously without amendment on July 26, 2006. On September 21, 2006, the Senate Committee on Banking, Housing, and Urban Affairs, which has jurisdiction over the Bank, marked up the House bill and sent the measure to the full Senate on September 26, 2006. S. 3938 was adopted with amendments by the full Senate on September 30, 2006. Eximbank's appropriations are continuing under P.L. 109-289 (H.R. 5631) as amended by **P.L. 109-369** and **P.L. 109-383**. On December 6, 2006, the House approved **S. 3938** in lieu of **H.R. 5068** to reauthorize the Bank's authority through September 30, 2011. The measure was signed by Bush on December 20, 2006, and was designated **P.L. 109-438**.

Both measures extend the Bank's charter, which expired on September 30, 2006, to September 30, 2011, and amend the Bank's charter in various areas. In some cases, these areas overlap, while in other areas, the two measures reflect different approaches to issues by Members of the House and the Senate. In broad terms, the two measures extend the Bank's authority to September 30, 2011. The measures also direct the Bank to organize a Small Business Division within the Bank to increase the Bank's efforts to assisting small business owners. In addition, both

measures require the Bank to establish a Small Business Committee within the Bank to coordinate efforts to assist small business.

Both measures extend the authority of the Bank's Advisory Committee on Africa to September 30, 2011, to assist U.S. firms exporting to Sub-Saharan Africa. The measures also extend to September 30, 2011, the Bank's authority to provide financing for the export of nonlethal defense articles and services that are meant primarily for civilian purposes. Both measures increase the transparency of the Bank's programs by requiring the Bank to publish notices of any intent to undertake an economic impact analysis of a project seeking a loan or guarantee from the Bank. The Bank is also required to seek comments on the proposed project from the Department of Commerce, the International Trade Commission, the Office of Management and Budget and the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services. The Bank is also required to publish any subsequent changes to the proposed project in the Federal Register and provide for a comment period.

Beyond these areas of common approaches, the two measures provide a number of different areas in which they amend the Bank's charter. For instance, H.R. 5068 would have authorized an office within the Bank to increase the total amount of loans and guarantees that go to support exports by "socially and economically disadvantaged small business concerns and small business concerns owned by women." H.R. 5068 also would have attempted to make the Bank's operations more transparent by keeping applicants better informed of the status of their application for a loan or guarantee and it would require the Bank to provide a broad set of reports to Congress on the Bank's operations. H.R. 5068 would have required the Bank to report to Congress annually on its efforts to improve the competitiveness of its programs relative to the programs of other official export credit agencies. H.R. 5068 would have directed the Bank to study how it might assist new or impoverished democracies, and provide greater assistance to exports involving renewable energy. S. 3938 directs the Bank to submit a list of commercial sectors and products that would suffer "adverse economic impact" due to Eximbank support for certain projects abroad.

Both measures amend the Bank's current procedures for operating the Bank's tied aid facility. H.R. 5068 would have reduced somewhat the role of the Secretary of the Treasury in the operation of the tied aid program, while S. 3938 expands the Secretary's role by providing a formal procedure that allows the Secretary to oppose decisions made by the Bank's Board of Directors to match an offer of tied aid by a foreign entity. H.R. 5068 would have broadened the current scope of the tied aid program by authorizing the Bank to use the program to support new measures on tied aid, enforce existing arrangements, and to bring into the Organization for Economic Cooperation and Development (OECD) Arrangement on Guidelines for Officially Supported Export Credits² those countries that currently are not a party to the

² The OECD Arrangement on Guidelines for Officially Supported Export Credits is a voluntary agreement among Australia, Canada, the European Community, Japan, Korea, New Zealand, Norway, Switzerland and the United States that provides a framework for the
(continued...)

Arrangement. The House measure would have reduced the burden on the Bank for information about foreign offers of tied aid. Often it is difficult for the Bank to meet the burden of proof that it has “credible information” about an offer by a foreign entity of tied aid if the foreign government is not a party to an agreement, such as the OECD Arrangement and, therefore, is under no requirement to provide information concerning its offers of tied aid. Instead, the Bank would have been required to have simply “credible evidence” based on a “history of such offers” in order to meet the burden of proof.

Side-by-Side Comparison of H.R. 5068 and S. 3938

The following section provides a more detailed comparison of the two bills.

Extension of Authority

Both measures would extend the Bank’s authority to September 30, 2011.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Extension of authority.	Same
Would extend the Bank’s authority to September 30, 2011.	

Small Business Division

Since 1975, Congress has taken an active interest in the way Eximbank supports small business.³ 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.⁴ Furthermore, Congress has directed the Bank to disseminate information about the

² (...continued)

use of officially supported export credits. The Arrangement became effective in 1978 and places limitations on the terms and conditions of officially supported export credits and the provision of tied aid. It includes procedures for prior notification, consultation, information exchange and review for export credit offers and offers of tied aid.

³ See also CRS Report RS22091, *Export-Import Bank: Legislative Mandate for Small Business*, by James K. Jackson.

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

Bank's medium-term financing program to small business concerns,⁵ and it has directed that the terms and conditions it offers to support U.S. firms, including small business, should be fully competitive with terms set by other countries.⁶

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.⁷ 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;⁸ (2) give fair consideration to small business;⁹ (3) aid, counsel, assist, and protect small business concerns;¹⁰ (4) designate an officer of the Bank responsible for small business concerns;¹¹ (5) ensure that 6% of the Bank's authority is available to small business concerns;¹² (6) offer competitive financing terms;¹³ (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;¹⁴ (8) promote small business exports and small business export financing programs;¹⁵ (9) urge the Foreign Credit Insurance Association to provide coverage against 100% of any loss for exports valued at less than \$100,000;¹⁶ (10) inform high technology small business concerns about exporting to countries in transition to market based economies;¹⁷ and (11) provide information to small and rural companies.¹⁸

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 increase loans to socially and

⁵ 12 U.S.C. Sec 635 (a)(2)(B)

⁶ 12 U.S.C. Sec 635 (b)(1)(B)

⁷ 12 U.S.C. 635a (d)(2)(A)

⁸ 12 U.S.C. Sec 635 (b)(1)(E)(i)(I)

⁹ 12 U.S.C. Sec 635 (b)(1)(E)(i)(II)

¹⁰ 12 U.S.C. Sec 635 (b)(1)(E)(ii)

¹¹ 12 U.S.C. Sec 635 (b)(1)(E)(iii)(I)

¹² 12 U.S.C. 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%.

¹³ 12 U.S.C. Sec 635 (b)(1)(E)(vi)

¹⁴ 12 U.S.C. Sec 635 (b)(1)(E)(vii)(I)

¹⁵ 12 U.S.C. Sec 635 (b)(1)(E)(viii)

¹⁶ 12 U.S.C. Sec 635 (b)(1)(F)

¹⁷ 12 U.S.C. Sec 635 (b)(1)(H)(iii)

¹⁸ 12 U.S.C. Sec 635 (b)(1)(I)

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.”¹⁹ Congress also required the Bank to submit an annual report detailing its efforts to involve small businesses.²⁰

H.R. 5068 and S. 3938 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 measures 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, the measures 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, transaction advocacy; advise and seek feedback from small business; and maintain liaison with the Small Business Administration. H.R. 5068 would have required the Bank officer designated to administer the Small Business Division to have “substantial experience” in financing exports by small business; have had the sole duty of ensuring that the division carried out its functions for small business; advised 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;²¹ and that the officer report directly to the President of the Bank. S. 3938 requires that the Bank officer managing the Small Business division appointed by the president of the Bank instead of by the Board of Directors.

To offer additional support to the Small Business Division, both measures 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 are required to 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.” The House measure would have granted the staff of the Small Business Division the authority to approve working capital loans and guarantees of up to \$10 million; the Senate measure leaves such policy decisions to the Board of Directors of the Bank.

In H.R. 5068, the Bank, during the course of handling and processing applications of small business for programs of the Export-Import Bank, would have been 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 have been required to establish and maintain “transaction standards tailored to the special circumstances of small business concerns” and then use the

¹⁹ 12 U.S.C. Sec 635 (b)(1)(E)(iii)(II)

²⁰ 12 U.S.C. Sec. 635g(b)(1) - (3), (c), (d)

²¹ The current Bank officer who is responsible for administering the Bank’s small business programs is a Senior Vice President.

standards to evaluate applications by small business concerns. The Bank would also have been required to ensure that “each appropriate division” of the Bank has staff dedicated to the processing of transactions involving small business concerns.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Small Business Division.	Same.
The measure would establish a Small Business Division within the Bank.	
Functions of the Small Business Division.	Same.
Would require the Small Business Division to carry out outreach, feedback, product improvement, and transaction advocacy for small business concerns.	
Would require the division to advise and seek feedback from small business on the financing products of the Bank, in particular: conducting outreach, tailoring products to small business needs, and increasing loans to small business concerns employing fewer than 100 employees.	
Would require the division to maintain liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.	
No comparable provision.	Provide oversight of the development, implementation, and operation of technology improvements to strengthen small business outreach.
Management.	Management.
Small Business Division would be managed by a Bank officer designated by the Board of Directors.	Bank officer would be appointed by the President of the Bank.
Bank officer to rank no lower than Senior Vice President.	Same.
Bank officer would be required to have substantial recent experience in financing exports by small business concerns.	Sole function would be to manage the Small Business Division.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Would ensure that the division carried out the functions of the division; would serve as the chairman of the Small Business Committee.	No comparable provision.
Would advise the Board of Directors and would represent the interests of small business.	No comparable provision.
Would report directly to the President of the Bank.	No comparable provision.
Staff.	Staff.
Each operating division of the Bank would have staff that specializes in transactions in support of exports by small business concerns.	Same.
Staff would be involved in all aspects of processing (including approval or disapproval, or staff recommendation of approval or disapproval, as appropriate) applications for loans, guarantees, and insurance.	Same.
May approve applications for working capital loans and guarantees, and for insurance, in support of exports which have a value of less than \$10,000,000.	May approve applications for working capital loans and guarantees, and insurance in accordance with policies and procedures established by the Board.
No comparable provision.	Small business specialists would consider the unique business requirements of small businesses and develop exporter performance criteria tailored to small business exporters.
No comparable provision.	Small business specialists would be identified on the Bank's website and in promotional material.
No comparable provision.	Small business specialists would be evaluated on their performance of duties related to transactions in support of small business concerns.
No comparable provision.	Staff recommendations of denial or withdrawal for medium-term applications, exporter held multi-buyer policies, single buyer policies, and working capital applications processed by the Bank would

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
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be required to be transmitted to the Senior Vice President of the Division not later than 2 business days before a final decision.

Resources.

The President of the Bank would ensure that the Small Business Division had sufficient qualified staff and budgetary resources to carry out the provisions of this section, after consultation with Bank officers and the House Committee on Financial Services; and the Senate Committee on Banking, Housing, and Urban Affairs.

The President of the Bank would ensure that the staff and budgetary resources of the division would be devoted solely to carrying out the functions of the division.

The Small Business Division would include staff dedicated exclusively to providing outreach, training, and advice to, seeking feedback from, and advocating on behalf of small business concerns regarding Bank financing opportunities, products, and programs.

No comparable provision.**Processing of Transactions.**

Consistent with the requirement that the Bank obtain a reasonable assurance of repayment for each transaction the Bank supports, the Bank would be required to establish and maintain transaction standards tailored to the special circumstances of small business concerns and would use the standards in evaluating applications by the concerns for Bank financing. The Bank would ensure that each appropriate division of the Bank has staff dedicated to the processing of transactions involving small business concerns.

No comparable provision.

Small Business Committee

Both measures require the Bank to establish and maintain a Small Business Committee that will focus on small business concerns and coordinate the efforts of the Bank with respect to small business concerns. The chairman of the Committee is the Senior Vice President of the Bank who is responsible for administering the Small Business Division. The Committee includes officers and employees from throughout the Bank who have responsibilities that involve small business. S. 3938 assigns a number of specific duties to the Small Business Committee, including developing the Bank's small business strategic plans and monitoring the Bank's progress in achieving the goals of the plan; evaluating the performance of each division within the Bank regarding small business; establishing criteria for evaluating the performance of staff; and coordinating with other government agencies providing services to small business. The Senate measure also gives the Chairperson of the Small Business Committee certain authority and grants the President of the Bank the authority to determine the composition of the Committee. Both measures require the Committee to prepare a report for the President of the Bank.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Small Business Committee.	Same.
Would establish a Small Business Committee.	
Purpose.	Same.
The purpose of the Committee would be to focus on small business concerns and coordinate the efforts of the Bank, including the timely processing of transactions and the evolution of new or improved Bank products.	
No comparable provision.	Duties.
	The Committee would assist in developing the Bank's small business strategic plans, including plans for improving the share of the Bank's business comprised of small business and improving technology to assist small business outreach. The Committee would also assist in measuring and reporting in writing to the President of the Bank, at least once a year, on the Bank's progress in achieving the goals.
	The Committee would evaluate and report in writing to the President of the Bank, at least once a year, with respect to: 1) the

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
	<p>performance of each operating division of the Bank in serving small business concerns; 2) the impact of processing and underwriting standards on transactions involving direct exports by small business concerns; and 3) the adequacy of the staffing and resources of the Small Business Division.</p> <p>The Committee would establish criteria for evaluating the performance of staff.</p> <p>The Committee would coordinate with other United States Government departments and agencies the provision of services to small business concerns.</p>
<p>Composition of the Small Business Committee.</p>	<p>Same.</p>
<p>Chairman.</p> <p>The chairman of the Small Business Committee would be the Senior Vice President of the Bank responsible for the Small Business Division.</p>	
<p>No comparable provision.</p>	<p>Authority.</p> <p>The Chairperson would have the authority to call meetings of the Small Business Committee, set the agenda, and request policy recommendations from the Committee's members.</p>
<p>Other members.</p> <p>Other members of the Committee would include staff of the Small Business Committee, and other officers and employees involved in outreach and processing transactions involving small business concerns as indicated by the President of the Bank.</p>	<p>Other members.</p> <p>The President of the Bank would determine the composition of the Small Business Committee; The President of the Bank would appoint or remove members; including: 1) the senior managing officers responsible for underwriting and processing transactions; and 2) other officers and employees of the Bank with responsibility for outreach to small business concerns and underwriting and processing transactions that involve small business concerns.</p>

H.R. 5068	S. 3938
Export-Import Bank Reauthorization Act of 2006	Export-Import Bank Reauthorization Act of 2006

Reports.

The Small Business Committee would report to the President of the Bank.

Staff evaluations.

Staff of the Committee would be evaluated on the basis of their performance related to transactions in support of exports by small business concerns.

Reports.

Same.

No comparable provision.

Small Business Exports

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 have required the Bank to work in cooperation with the aforementioned entities to streamline the processing of applications for Bank financing and to provide training and advice on “the needs and benefits of export financing for small business concerns.”

H.R. 5068	S. 3938
Export-Import Bank Reauthorization Act of 2006	Export-Import Bank Reauthorization Act of 2006

Small business exports.

The Bank would be required to work with consortia of small and medium size banks, export trading companies, State export finance agencies, financing cooperatives, small business investment companies to streamline the processing of applications for Bank financing from small business concerns and to provide training and advice as required on the needs and benefits of export financing for small business concerns.

No comparable provision.

Report on Fees Charged to Small and Medium Business

H.R. 5068 would have required the Bank 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 have been 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 is 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 is the fee structure of the Bank compared with that of other foreign export credit agencies.

H.R. 5068 also would have required 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	S. 3938
Export-Import Bank Reauthorization Act of 2006	Export-Import Bank Reauthorization Act of 2006
Report on fees charged to small and medium business.	No comparable provision.

The Bank would be required to provide annual reports to Congress to include:

- 1) Each type of transaction, the interest and fees charged by the Bank to exporters (including a description of fees and interest, if any, charged to small business concerns), buyers, and other applicants in connection with each financing program of the Bank, and the highest, lowest, and

H.R. 5068	S. 3938
Export-Import Bank Reauthorization Act of 2006	Export-Import Bank Reauthorization Act of 2006

average fees charged by the Bank for short term insurance transactions.

2) The effects of the fees on the ability of the Bank to achieve the objectives of the Bank relating to small business.

3) The fee structure of the Bank as compared with that of other foreign export credit agencies.

Annual report on financing directed toward small business. **No comparable provision.**

1) The extent to which the Bank has been able to use its authority, and, to the extent the Bank has been unable to fully do so, a report on the obstacles to doing so and on what the Bank is doing to overcome the obstacles.

2) The extent to which financing has been made available to small business concerns to enable them to participate in exports by major contractor, including through access to the supply chains of the contractors through direct or indirect funding; and

3) A strategic plan of action describing how, in the upcoming year, the Bank will take specific measures to achieve the small business objectives of the Bank, including expanded outreach, product improvements, and related actions.

Office of Financing for Socially and Economically Disadvantaged Small Business and Small Business Owned by Women

H.R. 5068 would have required the President of the Bank to establish within the Small Business Division an office that would have been 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 have required 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 was taking to reach the goal.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
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Office of financing for socially and economically disadvantaged small business concerns and small business concerns owned by women.

No comparable provision.

The President of the Bank would be required to establish an office whose sole functions would be to continue and enhance the outreach activities of the Bank with respect to, and increase 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 office would be managed by a Bank officer who would report to the Small Business Division.

To the maximum extent practicable, the President of the Bank would ensure that qualified minority and women applicants are considered when filling any position in the office.

The Bank would strive to make available not less than 15 percent of the amount to finance exports directly by small business concerns.

The Bank would report annually on its efforts to finance exports by small business concerns.

The Bank would report annually on its efforts to support exports by small and medium-sized businesses owned by women and minorities to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs, and the Bank would include a written report that describes the progress made by the Bank in supporting exports by socially and economically disadvantaged small business concerns and small business concerns owned by women.

Sensitive Commercial Sectors and Products

S. 3938 requires the President of the Bank to prepare annually a list for specified House and Senate Committees on “sensitive” commercial sectors and products in which offers of financial support for exports would be “unlikely,” because the Bank had determined that such offers could have an adverse economic impact on U.S. exports in those sectors.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
No comparable provision.	<p data-bbox="815 596 1323 663">Sensitive commercial sectors and products.</p> <p data-bbox="815 688 1323 1176">The Bank would be required to submit a list to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services, of sensitive commercial sectors and products for which financing support by the Bank is deemed unlikely by the President of the Bank due to the significant potential that such support would result in an adverse economic impact on the United States. The President of the Bank would review annually the list of sensitive commercial sectors and products and the Bank would submit an updated list to the respective committees in Congress.</p>

Sub-Saharan Africa

On the issue of Sub-Saharan Africa, the House and Senate measures are similar only in that they both would have extended the authority of the Advisory Committee on Africa to 2011. H.R. 5068 would have required 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. The Bank also would have been required to improve its working relationship with African financial institutions by having in place one year after this measure become law a contract between each approved lender in Africa and the Bank which have specified the Bank’s guarantee undertakings and related obligation between the Bank and the African lender.

In addition, H.R. 5068 would have required the Bank 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 have been required to coordinate closely with the U.S. Foreign Commercial Service and with the overall strategy of the U.S. Government on economic engagement in Africa relative to the African Growth and Opportunity Act. The Bank also would have been 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 have allowed the Bank to finance certain African programs in local currencies.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Sub-Saharan Africa.	Sub-Saharan Africa.
The measure would extend the authority of the Advisory Committee on Africa to 2011.	Same.
The Bank would seek within one year to have in effect a contract with each approved lender in Africa, which sets forth the Bank's guarantee undertakings and related obligations.	No comparable provision.
The Bank would include in its annual report to the Congress a section on the efforts of the Bank to improve working relationships with the African Development Bank, the Africa Export-Import Bank, and other institutions in the region.	No comparable provision.
The Bank would closely coordinate with the United States Foreign Commercial Service and with the overall strategy of the United States Government, for economic engagement with Africa pursuant to the African Growth and Opportunity Act.	No comparable provision.
The Bank would develop initiatives to train Foreign Service and Commercial Service officers serving at United State embassies in Africa, in the use of Bank programs, so the officers can encourage African buyers to take part in transactions supported by the Bank.	No comparable provision.
Consistent with the requirement that the Bank obtain a reasonable assurance of repayment in connection with each transaction the Bank supports, the Bank would seek greater flexibility in the due-diligence procedures of the Bank to qualify a greater number of appropriate African entities for participation in programs of the Bank.	No comparable provision.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
The Bank would develop procedures under which the Bank is capable of financing certain African programs in local currencies.	No comparable provision.

Exports of Nonlethal Defense Articles

H.R. 5068 and S. 3938 extend to September 30, 2011, the Bank's existing authority to provide financing for the export of nonlethal defense articles or services that are meant primarily for civilian purposes (such as drug eradication and interdiction).

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Authority to provide financing for the export of nonlethal defense articles or services primarily for civilian purposes.	Same.
The Bank's authority for financing such exports would be extended to September 30, 2011.	

Transparency Initiatives

H.R. 5068 included a large section dealing with transparency initiatives, or measures to make the operations of the Bank more accessible to businesses and to increase reporting requirements on the Bank. The Bank's Board of Directors would have been required to meet at least twice a week and the Board would have been 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 also would have been required to establish a clearly defined process for handling applications. These measures would have:

- 1) acknowledged that the Bank has received an application for one of the Bank's programs;
- 2) informed 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) kept applicants informed of the status of the application and the reason for any disapproval.

H.R. 5068 would have required the Bank to notify applicants within 45 days of applying for a Bank program of the status of the application. In addition, the Bank would have been 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.

H.R. 5068 also would have required the Bank 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 had been unable to comply with these two requirements, H.R. 5068 would have required the Bank to provide an analysis of the reasons why it had 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 name of the supervisor of such officers.

Subsequent to the initial report, H.R. 5068 would have required the Bank to report annually on the Bank's efforts to carry out the two requirements listed in the preceding paragraph. The report would have included 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 have been 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 name of the supervisor of the Bank officer. The Inspector General of the Export-Import Bank would have been required to file a report similar to the initial report that would be required under this section.

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<p>Transparency initiatives.</p> <p>The Board of Directors would be required to meet not less frequently than biweekly.</p> <p>At the request of any two Board members, the Chairman would place an item on the agenda for consideration by the Board.</p>	<p>No comparable provision.</p>

H.R. 5068	S. 3938
Export-Import Bank Reauthorization Act of 2006	Export-Import Bank Reauthorization Act of 2006

Within 30 days after the date of the request, the Chairman would hold a Board meeting at which the item would be considered.

Within 60 days after completing a economic impact analysis of a proposed loan or guarantee, the Board of Directors would be required to vote to determine whether or not to proceed with the proposed loan or guarantee, unless the applicant withdraws the application.

Process for Notifying Applicants of Application Status: **No comparable provision.**

The Bank would be required to establish and adhere to a clearly defined process for:

- 1) acknowledging receipt of applications;
- 2) informing applicants that their applications are complete or, if incomplete or containing a minor defect, of the additional material or changes that, if supplied or made, would make the application eligible for consideration; and
- 3) keeping applicants informed of the status of their applications, including a clear and timely notification of approval or disapproval, and, in the case of disapproval, the reason for disapproval, as appropriate.

Response to Application for Financing; Implementation of Online Loan Request and Tracking Process. **No comparable provision.**

Within 5 days after receipt of an application for financing, the Bank will notify the applicant that the application has been received, and will include:

- a) any request for additional information to complete the application,
- b) the name of a Bank employee who may be contacted with questions relating to the application,
- c) and a unique identification number which may be used to review the status of the application at a website established as

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provided in the next sentence.

Not later than September 1, 2006, the Bank would be required to establish, and maintain, a website through which any Bank product may be applied for, information may be obtained about the status of any such application, about the small business division of the Bank, or about incentives, preferences, targets, and goals relating to small business concerns or small business concerns exporting to Africa.

Reports Relating to Technology to Assist Small Businesses.

No comparable provision.

Initial report.

Within 60 days of the enactment of this Act, the President of the Bank would be required to submit to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs a report on:

1) The efforts made by the Bank to carry out subparagraphs (E)(ix) and (J) of section 2(b)(1) of the Export-Import Bank Act of 1945, including the total amount expended by the Bank to do so (**Note: the sections establish as a matter of policy efforts to encourage small business to participate in international trade and to establish an electronic tracking system for all applications to the Bank.**); and

2) If the Bank has been unable to comply with these activities, it would be required to provide:

a) an analysis of the reasons;

b) what the Bank is doing to achieve these objectives, and the date by which the Banks expects to have achieved, compliance; and

c) the name of each Bank officer who is responsible for ensuring that the Bank achieves, and the name of the person to whom the Bank officer reports on progress

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in achieving, such compliance.

Subsequent reports.

The Bank would include in its annual report for each of fiscal years 2007 through 2011 a separate section that contains:

1) A report on the efforts made by the Bank to carry out subparagraphs (E)(ix) and (J) of section 2(b)(1) of this Act (**Note: refers to efforts to encourage small business to participate in international trade and development of on-line resources for applications for the Bank's programs.**), the total amount expended in the fiscal year to do so, and how the efforts are assisting small business concerns; and

2) if the Bank had been unable to comply fully with the above requirements:

a) an analysis of the reasons why it had been unable to comply;

b) a description of what the Bank was doing to achieve, and the date by which the Banks expected to have achieved, such full compliance; and

c) the name of each Bank officer who would be responsible for ensuring that the Bank achieved, and the name of the person to whom the Bank officer reported on progress in achieving, such full compliance.

Report by the Inspector General of the Bank.

Within 120 days after the date of the enactment of this Act or, if later, within 30 days after the date the vacancy in the position of the Inspector General of the Export-Import Bank of the United States is filled, the Inspector General of the Export-Import Bank of the United States would be required to submit to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs of the Senate:

No comparable provision.

No comparable provision.

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1) a report on the efforts made by the Bank to assist small business, the total amount expended to do so, and how the efforts assist small business concerns (as defined under section 3(a) of the Small Business Act); and

2) if the Bank had been unable to comply with these requirements:

(a) an analysis of the reasons;

(b) a description of what the Bank was doing to achieve the requirements, and the date by which the Banks expected to have achieved, such compliance; and

(c) the name of each Bank officer who would responsible for ensuring that the Bank achieved, and the name of the person to whom the Bank officer reported on progress in achieving, such compliance.

Public Disclosure of Certain Documents. No comparable provision.

Procedures for disclosure of documents would provide for the public disclosure of environmental assessments and supplemental environmental reports required to be submitted to the Bank, including remediation or mitigation plans and procedures, and related monitoring reports. These procedures would not be interpreted to require the public disclosure of any information described in section 1905 of title 18, United States Code.

Budgetary Effects

H.R. 5068 would have required the Bank to report to Congress on the impact of the Bank's programs on the Federal Government's budget over the preceding ten years.

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Budgetary effects of the Bank.

Within 90 days of enactment of this Act, the Bank would submit to the appropriate committees of the Congress a report on the revenues, expenditures, and resulting annual net income or expense to the United States for each of the 10 years most recently completed before the date of the report.

No comparable provision.**Competitiveness Initiatives**

H.R. 5068 also included a large section on “competitiveness initiatives” that is not present in S. 3938. The House measure would have required the Bank to report more extensively on its efforts to improve the competitiveness of its programs. The measure would have made a number of changes to the Bank’s tied aid program that might have lessened the influence of the Secretary of the Treasury on the tied aid program and have broadened the scope of the Bank’s tied aid program.

The Bank would have been 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 have been 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 have been 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 has taken to comply with the two aforementioned requirements, the Bank would have been 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 have been required to report in specific terms on the ways in which the Bank’s rates, terms, and other conditions compare with those offered directly or indirectly by other governments. The Bank also would have been 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 have been 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 have been required to have the Board of Directors approve and sign each report required by the section of H.R. 5068 and the reports would have been required to include dissenting views. The Bank also would have been 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.

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Competitiveness initiatives.

No comparable provision.

Annual competitiveness report.

No comparable provision.

Not later than June 30 of each year, the Bank would submit to the appropriate committees of the Congress a report that includes the following:

1) A description of the actions the Bank had taken to provide financing on a competitive basis and to minimize competition in officially-supported export financing. The report would also include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters (including through use of market windows (as defined in section 10(h)(7)) and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly.

The Bank would use all available information to estimate the annual amount of export financing available from other foreign government and government-related agencies.

The report would include a survey of a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine the experience of the exporters and institutions in meeting financial competition from other countries whose exporters compete with United States exporters.

2) A description of the role of the Bank in implementing the strategic plan prepared by the Trade Promotion Coordinating Committee in accordance with section 2312 of the Export Enhancement Act of

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1988.

3) The report would also include information on the tied aid credit program.

4) The report would also include a description of all Bank transactions classified according to their principal purpose, such as to correct a market failure or to provide matching support.

5) The report would include a description of the Bank's efforts to promote exports related to renewable energy sources.

6) A separate section of the report would:

a) compare the size of the Bank's program account with the size of the program accounts of the other major export-financing facilities; and

b) make recommendations with respect to the relative size of the Bank program account, based on factors including whether the size differences are in the best interests of the United States taxpayer.

7) A separate section would describe the co-financing programs of the Bank and of the other major export-financing facilities referred to in paragraph (1), which would include a list of which countries with which the United States has in effect a memorandum of understanding relating to export credit agency co-financing and an explanation of why such a memorandum is not in effect with the countries with which such a memorandum is not in effect.

8) A separate section which would describe the participation of the Bank in providing funding, guarantees, or insurance for after-market services, which would include appropriate information on the involvement of the other major export-financing facilities referred to in paragraph (1) in providing such support for after-market services, and an explanation of any differences among the facilities in providing the support.

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9) Detailed information on cases of export finance 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 commercial competitive advantage.

10) A description of the extent to which the activities of foreign export credit agencies and other entities sponsored by a foreign government, are not in compliance with the OECD Arrangement and the WTO Agreement on Subsidies and Countervailing Measures and a description of the actions taken by the United States Government to address the activities.

The Board of Directors would be required to vote to approve and would sign the annual competitiveness report.

The report would also include any dissenting views and additional comments as any member of the Board of Directors may submit to the Board for inclusion in the report.

Report on Involvement of the Bank and of Other Export Credit Agencies in Regional Multi-Buyer Insurance Programs and Working-Capital Guarantee Programs.

No comparable provision.

The Bank would be required to report to the Congress on:

(1) Regional multi-buyer insurance programs and working capital guarantee programs operated by, through, or in conjunction with the Bank, which would include an analysis of the effectiveness of the programs and of how effective the programs would be in increasing export-related jobs in the United States if the programs were larger;

(2) The size of similar programs of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with

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United States exporters (including through use of market windows (as defined in section 10(h)(7)); and

(3) A detailed explanation, with respect to the programs, of the working relationship between the Bank and the Small Business Administration, the Department of Commerce, and other United States Government agencies concerned with increasing the number of export-related jobs in the United States.

Environmental Matters

H.R. 5068 would have required the Bank to have two members of the Bank's Advisory Committee represent non-governmental environmental organizations.

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Environmental matters.

No comparable provision.

Not less than 2 members appointed to the Advisory Committee would represent the environmental nongovernmental organization community, except that no 2 of the members would be from the same environmental organization. Environmental organizations represented would have demonstrated experience with environmental issues associated with the Bank, the Export Credit Group of the Organization for Economic Cooperation and Development, or both.

Eximbank's Efforts to Assist New or Impoverished Democracies

H.R. 5068 would have required the Bank to conduct a study to assess the needs of new or impoverished democracies, such as Liberia and Haiti, and to determine what role the Bank can play in assisting U.S. exports to meet the needs of new or impoverished democracies. The Bank would have been required to prepare an

interim report for Congress within six months of passage of the measure and a final report within one year to present the results of the Bank's study.

H.R. 5068 Export-Import Bank Reauthorization Act of 2006	S. 3938 Export-Import Bank Reauthorization Act of 2006
Study of how the Bank could assist U.S. exporters to meet the needs of new or impoverished democracies.	No comparable provision.
Study. The Bank would conduct a study to assess the needs of new or impoverished democracies such as Liberia and Haiti, for imports from the United States, and will determine what role the Bank can play in helping U.S. exporters take advantage of these opportunities.	No comparable provision.
Reports to the Congress.	No comparable provision.
1) Interim report. Within 6 months after the date of the enactment of this Act, the Bank will submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, an interim report that contains the results of the study required by subsection.	No comparable provision.
2) Final report. Within 12 months after the date of the enactment of this Act, the Bank would be required to submit to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs, in writing a final report that would contain the results of the study.	No comparable provision.

Review of Environmental Screening Requirements

H.R. 5068 would have required the Inspector General of the Bank to report to Congress on the impact of altering the Bank's environmental review procedures to limit such reviews to projects valued at more than \$10 million. The measure also would have required the Inspector General to propose guidelines that are more effective in assessing the potential environmental impact of a project.

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Review of environmental screening requirement. **No comparable provision.**

Within 6 months after the position of Inspector General of the Export-Import Bank of the United States is filled, the Inspector General would be required to submit to the House Committee on Resources and the Committee on Financial Services, and to the Senate Committee on Banking, Housing, and Urban Affairs a report on the implications of limiting the requirement to conduct environmental screenings of projects proposed to be financed by the Bank to only those involving at least \$10,000,000.

The report would:

No comparable provision.

1) determine whether the \$10,000,000 limitation prevents the identification of any project that may have an adverse effect on the environment; and

2) propose guidelines for how project applications may be screened more effectively to determine whether a project may have such an effect.

Office of Renewable Energy Promotion

H.R. 5068 would have supported the Bank's efforts to promote the export of activities that promote renewable energy by establishing the Office of Renewable Energy within the Bank. The office would have been responsible for identifying new opportunities for financing projects involving renewable energy. The Bank would have been required to report to congress annually on its efforts to promote renewable energy projects.

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Office of renewable energy promotion. **No comparable provision.**

Within 1 year after the date of the enactment of this subsection, the President of the Bank would be required to establish and maintain in the Bank an office known

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as the ‘Office of Renewable Energy Promotion.’

Functions: The Office would be responsible for proactively identifying new opportunities for renewable energy financing. In carrying out its function of promoting renewable energy technologies, the Office would, among other things, consider the recommendations made by the Renewable Energy Export Advisory Committee.

No comparable provision.

Staff: The President of the Bank would ensure that the Office had staff with appropriate expertise in renewable energy technologies.

No comparable provision.

Annual reports: The Bank would be required to submit annually to the House Committee on Resources and the Committee on Financial Services, and to the Senate Committee on Banking, Housing, and Urban Affairs, a report that contained:

No comparable provision.

(A) a detailed description of the activities of the Office; and

(B) an analysis comparing the level of credit extended by the Bank for renewable energy projects with the level of credit extended for the preceding fiscal year.

Renewable energy technologies would be defined as: technologies for producing power through the use of solar energy, wind energy, and energy from biomass, fuel cells, or geothermal sources, and technologies for producing less than 10 megawatts in hydropower.

Transparency

Both H.R. 5068 and S. 3938 include a section that was meant to help reduce the “adverse effects of loans and guarantees on industries and employment in the United States” as a result of Eximbank support for certain exports. The requirements in these sections are meant to be part of a detailed economic impact analysis or study completed by the Bank as part of a determination by the Bank to offer support for a

capital project or in support of export sales. In those cases in which the Bank determined that it would undertake an economic impact analysis, the Bank would be required to publish in the Federal Register a notice of its intent to conduct the study and to seek public comments. The Bank also would be required to address in writing the views of those who believe that they would be “substantially adversely affected” by a proposed project.

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Transparency.

If, in deciding to make a loan or guarantee, the Bank intended to conduct a detailed economic impact analysis or similar study, the Bank would be required to publish in the Federal Register a notice of the intent, and provide a period of not less than 14 days (which, on request by any affected party, would be extended to a period of not more than 30 days) for the submission to the Bank of comments on the economic effects of the provision of the loan or guarantee.

In addition, the Bank would be required to seek comments on the effects from the Department of Commerce, the International Trade Commission, the Office of Management and Budget, the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services.

The notice would be required to include appropriate, nonproprietary information about:

- 1) the name of the applicant;
- 2) the country to which the goods involved in the transaction would be shipped;
- 3) the type of goods that would be exported;
- 4) the amount of the loan or guarantee involved;
- 5) the goods that would be produced as a result of the provision of the loan or guarantee;
- 6) the amount of increased production that would result from the transaction;
- 7) the potential sales market for the resulting goods;
- 8) the value of the transaction; and
- 9) any other relevant information.

Same.

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Material changes in applications.	Same.
If a material change had been made to an application for a loan or guarantee from the Bank after a notice had been published under this subparagraph, the Bank would publish in the Federal Register a revised notice of the intent, and would provide for a comment period.	
Material changes.	Same.
The term ‘material change’ would include: 1) a change of at least 25 percent in the amount of a loan or guarantee requested in the application; and 2) a change in the principal product to be produced as a result of any transaction that would be facilitated by the provision of the loan or guarantee.	
Requirement to consider adverse views.	Same.
Before taking final action on an application for a loan or guarantee, the Bank would consider and address in writing the views of any person who may be substantially adversely affected by the provision of the loan or guarantee.	
Publication of conclusions.	Same.
The Board of Directors would provide to the affected party a non-confidential summary of the facts found and conclusions reached in any detailed economic impact analysis or similar study with respect to the loan or guarantee, that were submitted to the Board of Directors.	
 Aggregate Authority 	
The Senate measure extends the Bank’s aggregate loan, guarantee, and insurance authority to September 30, 2011.	
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No comparable provision.**Aggregate loan, guarantee, and insurance authority.**

The Bank's aggregate loan, guarantee, and insurance authority would be extended through September 30, 2011.

Anti-Circumvention

Both H.R. 5068 and S. 3938 require the Bank to determine whether an entity that received a loan or guarantee could produce products that would be in addition to those specified in the application for the loan or guarantee and whether such additional products could cause "substantial injury" to U.S. producers. In addition, the Bank is prohibited from extending a loan or guarantee to a project if the Bank determines that the action would result in the circumvention of a trade law or a trade determination.

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Anti-circumvention.	Same.
In making a loan or guarantee, the Bank would be required to determine whether the facility that would benefit from the extension of a credit or guarantee would be reasonably likely to produce products in addition to or other than the product specified in the application and whether the production of the products may cause substantial injury to United States producers of the same, or a similar or competing, commodity.	
Anti-circumvention.	Same.
The Bank would not be able to provide a loan or guarantee if the Bank determined that the action would facilitate circumvention of a trade law order or determination.	
Financial threshold determinations.	Same.
In order to determine if a proposed transaction exceeded a financial threshold, the Bank would aggregate the dollar amount of the proposed transaction and the dollar amounts of all loans and guarantees, approved by the Bank in the preceding 24-month period, that involved the same	

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foreign entity and substantially the same product to be produced.

Performance Standards for Small Businesses

According to the House measure, the Comptroller General of the United States would have been required to provide the Bank with a set of standards the Bank would have used to determine the extent to which it had encouraged small business to participate in international trade and to provide small business information about the Bank's programs. The Comptroller General also would have been required to provide the Bank with a set of rules against which it would measure its success in meeting the standards.

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Performance standards for assistance for small businesses, especially those owned by socially and economically disadvantaged individuals and by women.

No comparable provision.

Within 120 days after enactment of this measure, the Comptroller General of the United States will develop and transmit to the Board of Directors of the Export-Import Bank of the United States:

- 1) a set of standards which may be used to determine the extent to which the Bank has encouraged small business to participate in international trade and to provide information to small business about the Bank's programs; and
- 2) a set of rules for measuring the performance of the Bank against the standards.
- 3) Report on Performance: The Bank will include in its annual report to the Congress, the extent to which the Bank has encouraged small business to participate in international trade and to provide information to small business about the Bank's programs.

Tied Aid Credit Program

Both measures alter the Bank's tied aid program, although in decidedly different ways. Currently, the Bank is required to utilize the tied aid fund to match offers of tied aid credits by official export agencies that violate the OECD Arrangement on tied aid and to support U.S. exporters who are placed at a competitive disadvantage as a result of foreign offers of tied aid credits. H.R. 5068 would have added to this list the requirement that the Bank support U.S. exporters that face competitors who are receiving support from foreign export credit agencies that are not a party to the OECD Arrangement. The House measure also would have required the Bank to promote compliance with the OECD Arrangement among countries that currently are not a party to the Arrangement. H.R. 5068 also would have reduced somewhat the role of the Secretary of the Treasury in overseeing the tied aid program by removing current requirements that the Bank work with the Secretary in administering the program and in determining how the tied aid funds are used.

H.R. 5068 also would have provided guidance from the Congress to the Secretary of the Treasury regarding negotiations on the OECD Arrangement. In particular, the Secretary would have been 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 OECD 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.

H.R. 5068 also would have expanded the current set of tied aid principles, which requires the Bank to have "credible information" that an offer of tied aid exists before the Bank can use its tied aid facility to match the offer. Instead, the Bank would have needed only "credible evidence" of a tied aid offer to utilize its tied aid program. This change would have eased the burden of proof on the Bank in those cases in which the foreign entity is not a party to the OECD Arrangement and, therefore, not required to inform other countries of its offers of tied aid. The measure also would have required the President of the United States to notify Congress in those cases in which the President, in consultation with the Secretary of the Treasury and the President of the Bank, declined to match a foreign offer of tied aid because he had determined that such an offer would "materially impede" the broader purposes of the tied aid program.

S. 3938 charts a different approach to tied aid. The measure directs the Bank to process applications for tied aid according to principles and standards that are developed in cooperation with the Secretary of the Treasury. In addition, the measure provides for a direct role for the Secretary of the Treasury in approvals of tied aid by the Bank. Twenty days prior to the scheduled meeting of the Bank's Board of Directors to approve a application for tied aid, the Bank is directed to brief the Secretary of the Treasury on the proposed application. The Secretary can request up to a 14-day postponement of the Bank's consideration of the proposed tied aid application.

S. 3938 amends the current process for approving use of the tied aid facility by providing that, on a case-by-case basis, the Secretary of the Treasury can appeal a decision by the Bank's Board of Directors to approve the use of the tied aid facility by stating in writing the basis for the appeal to the President of the United States. The President can overturn the Bank's decision to use tied aid credits if he determines that the use of the credits would "materially impede" achieving the major purposes of the tied aid program, particularly enforcing the existing provisions of the OECD Arrangement and negotiating new or revised agreements.

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Clarification of Use of Tied Aid Credit Fund.

No comparable provision.

Would amend the Eximbank statute to add a third task for the tied aid credit fund. (The first two tasks are to: match offers of tied aid credit by official credit agencies when they violate the OECD Arrangement and exploit loopholes; and support U.S. exporters that who are placed at a competitive disadvantage as a result of foreign offers of tied aid credits.)

The Bank would be required to support U.S. exporters when they face foreign competition that is supported by foreign export credit agencies or other entities sponsored by a foreign government that are not party to the Arrangement;

The Bank would also promote compliance with Arrangement rules among foreign export credit agencies that are not a party to the Arrangement.

The measure would amend the current tied aid process by removing the requirement that the Bank administer the program in consultation with the Secretary of the Treasury. The measure would remove the current requirement that the Bank work jointly with the Secretary of the Treasury in determining how the tied aid funds should be used. Also, the measure would remove the current requirement that the Bank work with the Secretary of the Treasury in developing a set of principles and standards to use in administering the tied aid program.

The measure would broaden the scope of

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the tied aid program to use it to support new measures on tied aid, enforce existing arrangements and to bring into the Arrangement those countries that are not currently a party to the Arrangement.

The measure would expand the current set of tied aid principles, which require the Bank to have “credible information” about a foreign offer of tied aid before the Bank can use the tied aid fund to match a specific offer by a foreign agency. In cases where information about a specific offer of foreign tied aid (or untied aid used to promote exports as if it were tied aid) is not available in a timely manner, or is unavailable because the foreign export credit agency involved is not subject to the reporting requirements under the Arrangement, then the Bank may decide 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 measure would also require the President of the United States to notify the Congress in those cases in which the President, in consultation with the Secretary of the Treasury and the President of the Export-Import Bank had determined that offering tied aid credit in a particular circumstance would “materially impede” the broader purposes of the tied aid program.

Expansion of Countries in Competition With Whom the Bank Is to Provide Export Financing. No comparable provision.

The measure would expand the number of countries with which the Bank is authorized to use its programs, including its tied aid credit fund, to include countries whose governments are not a party to the OECD Arrangement.

Authority to Seek Use of Mixed Forms of Concessional Financing. No comparable provision.

The measure would add a new, final section to the Bank’s authority to

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administer the tied aid credit program, which could potentially broaden the scope of the program. For purposes of improving the effects of Bank financing on development in tied aid eligible markets (as defined under the Arrangement) and of improving the competitiveness of the Bank in the markets, the Bank would be required, in consultation with United States government aid agencies and, as appropriate, multilateral aid institutions, to seek to establish, consistent with the Arrangement, a mixed credit program consisting 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 foreign market involved.

Instructions Regarding Negotiation of the OECD Arrangement.

No comparable provision.

The measure would direct the Secretary of the Treasury to instruct the designee of the Secretary responsible for negotiating the WTO Arrangement to inform the other participants in the negotiation that the goals of the United States include the following:

(1) Seeking compliance with the Arrangement among countries with significant export credit programs who are not members of the Arrangement.

(2) Seeking to identify within the World Trade Organization the extent to which countries that are not a party to the Arrangement are not in compliance with the terms of the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)) in regards to export finance, and seeking appropriate action within the World Trade Organization if a country is not in compliance.

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(3) Implementing new disciplines on the use of untied aid, market windows, and other forms of export finance that seek to exploit loopholes in the Arrangement for purposes of obtaining a commercial competitive advantage.

No comparable provision.

Tied aid credit program.

In handling applications involving the Tied Aid Credit Fund to counter foreign credit:

1) The Bank would be required to process an application for tied aid according to the principles and standards developed pursuant to subparagraph (A) and clause (i) of this subparagraph. **(Note: these sections require the Bank to develop standards regarding the processing of applications for tied aid in cooperation with the Secretary of the Treasury).**

2) Twenty days prior to the scheduled meeting of the Board of Directors at which an application for tied aid would be considered (unless the Bank determines that an earlier discussion is appropriate based on the facts of a particular financing), the Bank would be required to brief the Secretary of the Treasury on the application and deliver to the Secretary such documents, information, or data as may reasonably be necessary to permit the Secretary to review the application to determine if the application complies with the principles and standards developed in this paragraph.

3) The Secretary could request a single postponement of the Board of Directors' consideration of an application for up to 14 days to allow the Secretary to submit to the Board of Directors a memorandum objecting to the application.

4) Case-by-case decisions on whether to approve the use of the Tied Aid Credit Fund would be made by the Board of Directors, except that the approval of the Board of Directors (or a commitment letter based on that approval) shall not become

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final (except as provided in subclause (V)), if the Secretary indicates to the President of the Bank in writing the Secretary's intention to appeal the decision of the Board of Directors to the President of the United States and makes the appeal in writing not later than 20 days after the meeting at which the Board of Directors considered the application.

5) The Bank would not grant final approval of an application for any tied aid credit (or a commitment letter based on that approval) if the President of the United States, after consulting with the President of the Bank and the Secretary of the Treasury, determines within 30 days of an appeal by the Secretary that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6). (**Note: the purposes relate to enforcing the existing provision within the OECD Arrangement on tied aid and to negotiating or enforcing new or revised agreements.**) If no such Presidential determination is made during the 30-day period, the approval by the Bank of the application (or related commitment letter) that was the subject of such appeal shall become final.

Prohibition on Assistance for Certain Railway Connections

This provision is intended to prevent U.S. funds from encouraging a Turkish blockade of Armenia, which has been locked in a conflict with neighboring Azerbaijan since the 1980s over the ethnic enclave of Nagorno-Karabakh. Under the provision, the Bank is prohibited from promoting or funding a railroad running from Azerbaijan through the Republic of Georgia and into Turkey.

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Prohibition on providing assistance to develop or promote certain railway connections.	Same.
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The Bank would be prohibited from providing guarantees, insurance, extending credit, or participating in an extension of credit in connection with the development or promotion of any rail connections or railway-related connections that do not traverse or connect with Armenia, and do not traverse or connect Baku, Azerbaijan, Tbilisi, Georgia, and Kars, Turkey.