

# U.S. Export-Import Bank Reauthorization Brings Change and Opportunity

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Summer 2012

On May 30, President Obama signed into law the Export-Import Bank Reauthorization Act of 2012 (the Act), which extends the Export-Import Bank of the United States (Ex-Im Bank) for an additional three years through September 30, 2014. Ex-Im Bank, which was established in 1934 and became an independent U.S. government agency in 1945, provides direct loans, loan guarantees and export-credit insurance to assist non-U.S. entities to purchase U.S. goods and services. Prior to enactment of the Act, Ex-Im Bank's charter was set to expire on May 31, 2012, and its loan exposure was nearing its statutory limit.

The Act, a bipartisan compromise resulting from negotiations between Republican and Democrat leaders in the House, was overwhelmingly passed by a vote of 330 to 93 in the U.S. House of Representatives and 78 to 20 in the U.S. Senate. However, unlike earlier reauthorizations of Ex-Im Bank, enactment of the law was not a foregone conclusion, for critics of Ex-Im Bank and its activities, which included some fiscally conservative legislators and groups and some U.S. airlines, had been vocal in their opposition to Ex-Im Bank and sought to close Ex-Im Bank. Enactment of the Act thus represents a rare bipartisan legislative accomplishment in a Congress that has been deeply divided.

## Loan Exposure Limit Raised

The Act raises Ex-Im Bank's loan exposure limit from \$100 billion to ultimately (and conditionally) \$140 billion through a series of annual step increases. For the current federal fiscal year, which ends on September 30, 2012, Ex-Im Bank's loan exposure limit increases to \$120 billion. For each of the fiscal years ending on September 30, 2013, and September 30, 2014, the exposure limit will increase by an additional \$10 billion each year provided that (i) Ex-Im Bank's default rate remains below 2 percent each fiscal quarter following enactment of the law and (ii) Ex-Im Bank and the Treasury Secretary have submitted to Congress certain reports, which are described below.

To trigger the initial \$10 billion increase in the exposure limit on October 1, 2012, Ex-Im Bank is required to submit to Congress and the Comptroller General prior to September 30, 2012, a report on Ex-Im Bank's estimated exposure limits, risks of loss, compliance with certain mandates and resources. To trigger the second \$10 billion increase in Ex-Im Bank's exposure limit on October 1, 2013, Ex-Im Bank must submit to Congress, within 120 days after the Comptroller General has issued a comprehensive report on Ex-Im Bank's

growth history, risk-management practices, default rates, fees and loan loss reserves policy, a report on Ex-Im Bank's implementation (or rejection) of the recommendations in the Comptroller General's report. In addition, the Treasury Secretary is required to submit to the appropriate House and Senate committees with oversight over Ex-Im Bank, within six months of enactment of the Act and annually thereafter, a report on certain multilateral negotiations that the Treasury Secretary is directed to conduct.

### **Multi-Lateral Negotiations to Eliminate Subsidies**

Specifically, the Act requires that the Treasury Secretary initiate and pursue negotiations with other countries with two distinct objectives in mind. One set of negotiations is to be with other major exporting countries, including members of the Organisation for Economic Co-operation and Development (OECD), with the aim of substantially reducing and ultimately eliminating subsidized export financing programs and other subsidies in general. The second set of negotiations is to be with countries that specifically finance commercial aircraft through state-sponsored entities, and aims to substantially reduce and ultimately eliminate export credit financing for all aircraft covered by the 2007 Sector Understanding on Export Credits for Civil Aircraft. Among the aircraft to be covered by such negotiations are (i) heavy aircraft with a takeoff weight of 300,000 lbs. or more, (ii) large aircraft with a takeoff weight of more than 41,000 lbs. and (iii) small aircraft with a takeoff weight of 41,000 lbs. or less.

### **Monitoring Default Rate**

The Act also requires that Ex-Im Bank monitor its default rate on a quarterly basis and submit to Congress monthly reports as long as the default rate remains below 2 percent each quarter. If, however, the default rate equals or exceeds 2 percent in any quarter, Ex-Im Bank will be required to submit to Congress, within 45 days thereafter, a report that (i) explains the circumstances for reaching or exceeding the 2 percent default rate threshold and (ii) provides a plan to reduce the default rate to below 2 percent. If the default rate remains above 2 percent over a six-month period, the Treasury Secretary will be required to have an independent third party conduct a review of Ex-Im Bank's loan programs and funds, and propose recommendations for restoring Ex-Im Bank's reserves and capital.

### **Opportunity to Comment on Large Transactions**

The Act further requires that Ex-Im Bank give any interested party an opportunity to comment on any transaction or series of transactions valued at more than \$100 million and any material change in any transaction that increases the amount of the loan or guarantee by at least 25 percent. This requirement is in addition to the existing statutory requirement for Ex-Im Bank to provide notice of any such transactions to Congress. Specifically, Ex-Im Bank will be required to publish a notice of the proposed transaction in the Federal Register (including non-proprietary information about the transaction's purposes, parties and the products covered) and allow a period of not less than 25 days for the submission of comments on the proposed transaction. For purposes of determining the \$100 million threshold, all Ex-Im Bank long-term loans and guarantees to the same party and involving the same product during the preceding 12-month period are to be aggregated. All comments received by Ex-Im Bank will need to be considered by Ex-Im Bank's Board of

Directors (the Board) before final action is taken on the proposed transaction. Within 30 days of the Board's final decision, Ex-Im Bank is required to provide a summary of the facts found and conclusions reached in connection with the transaction to each commenter who so requests.

### **Increased Transparency and Reform**

The Act imposes a host of additional requirements on Ex-Im Bank that are intended to make it more transparent, and reform its policies and practices. Among other things, Ex-Im Bank is required to:

- Identify in its annual report the purpose of all loans and long-term guarantees that it makes based on certain categories set forth in the Act;
- Publish methodical guidelines for conducting its economic impact analyses;
- Conduct a review of its domestic content policy for medium-and long-term transactions, and its impact on maintaining and creating U.S. jobs;
- Examine and report on its support of exports from small businesses in the U.S.; and
- Report on its implementation or rejection of a 2007 Government Accounting Office report on Ex-Im Bank.

Ex-Im Bank is also required to set consistent due diligence standards for its lender partners and participants that include "Know Your Customer" practices. Furthermore, the Act expressly prohibits Ex-Im Bank from taking a subordinate lender position in any financing transaction.

### **Credit Support for Aircraft Sales**

In the fiscal year that ended on September 30, 2011, Ex-Im Bank approved \$32.7 billion in total authorizations, with more than \$12.6 billion of financing to support the export of U.S.-manufactured aircraft of all types. Of this amount, a total of \$10.8 billion was for commercial aircraft sales to 21 countries and approximately \$90 million was for 10 corporate aircraft deliveries to Brazil, Mexico, Panama and Switzerland. Over the past three years, Ex-Im Bank has supported export sales of more than 460 Boeing aircraft valued at more than \$60 billion. Among the U.S. exporters that use Ex-Im Bank to finance sales are The Boeing Company, Hawker Beechcraft Corp., Cessna Aircraft Company, Bell Helicopter Textron, Inc., Gulfstream Aerospace Corporation and General Electric Company.

On May 14, 2012, Ex-Im Bank announced that it approved a guarantee of a \$350 million, 12-year term loan facility provided by PNC Bank to assist Textron Inc. in financing the sale by its subsidiaries, Cessna Aircraft Company and Bell Helicopter Textron, of new Cessna aircraft and Bell commercial helicopters. The credit facility is guaranteed by Textron's captive finance company, Textron Financial Corporation (TFC), which retains the credit risk, and will be disbursed on a periodic basis to reimburse TFC for loans made to international buyers. This guarantee was the second financing facility approved by Ex-Im Bank to assist TFC. (In May 2009, Ex-Im Bank authorized a \$500 million direct-loan to TFC that was used to provide financing for the sale of more than 100 Cessna aircraft and six Bell helicopters.)

## **Financing of Aviation Services**

Ex-Im Bank's credit support to the aviation industry is not limited to sales of aircraft. On April 5, 2012, Ex-Im Bank announced that the Board had approved a final commitment for an \$84.8 million loan guarantee to VRG Linhas Aereas S.A. (GOL) to support the provision of engine heavy maintenance services by Delta TechOps, a Delta subsidiary. Ex-Im Bank's guarantee will cover the first two years of a five-year contract signed by GOL and Delta TechOps in December 2010 that provides scheduled and unscheduled engine removals for the CFM56-7B engines installed on GOL's B737 NG aircraft. The engines will be shipped from Sao Paulo to Atlanta, where Delta is headquartered and the heavy maintenance services will be performed.

## **New Policies to Further Support Aviation**

On May 14, 2012, Ex-Im Bank announced a new process to assess credit risks and expedite non-U.S. buyer financing from Ex-Im Bank. Ex-Im Bank reported that it will work with qualified industry experts to perform due diligence and credit analysis to facilitate Ex-Im Bank's support of exports of U.S.-manufactured corporate aircraft. This new process is intended to benefit manufacturers that do not have a captive financing company but which can designate one or more advisors with requisite knowledge, experience and expertise with corporate aircraft financing to work with their non-U.S. buyers.

On May 25, 2012, Ex-Im Bank announced a new policy to increase U.S. aviation-industry exports. Under the new policy, Ex-Im Bank will finance transactions of U.S.-manufactured goods and services for aftermarket (post-manufacture) use on non-U.S. manufactured aircraft. This new policy is intended to support the aftermarket sale of such U.S.-made goods and services as escape slides, flight simulators, entertainment systems and maintenance services to non-U.S. airlines to outfit or service their aircraft. Ex-Im Bank also announced that it will now consider support for exports by U.S. small businesses to non-U.S. aircraft manufacturers. Ex-Im Bank's policy, however, will continue to prohibit Ex-Im Bank's financing of sales of capital goods, services and major components to non-U.S. large aircraft manufacturers by other than U.S. small businesses.

Ex-Im Bank's Chairman and President, Fred P. Hochberg, has pledged to increase the aid provided by Ex-Im Bank to U.S. aircraft manufacturers, including corporate aircraft manufacturers, to \$1 billion by 2014.

## **Conclusion**

The reauthorization of Ex-Im Bank extends and expands an export credit agency that provides significant financing assistance for the export of U.S.-manufactured commercial and corporate aircraft, and other aviation-industry products and U.S.-based aviation-related services, including aircraft and engine maintenance services. Ex-Im Bank's reauthorization creates an opportunity for U.S. companies, including small businesses, that export such goods and services and for their non-U.S. buyers to access competitively-priced financing for those goods and services, particularly in markets where the availability of financing is limited.