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# Export-Import Bank of the United States Open for New Business Again

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On December 4, 2015 President Obama signed legislation reauthorizing the charter of the Export-Import Bank of the United States (“**US Ex-Im Bank**”) through 2019. The reauthorization is part of a 5 year, US\$305 billion transportation funding approved by both houses of the US Congress. As a result, US Ex-Im Bank will begin doing new business again, ending for now a long and well-publicized debate about the future of the US’s official export credit agency.

US Ex-Im Bank, an independent and self-funding agency of the US government, provides a variety of financial products such as direct loans, financial guarantees and insurance products to benefit foreign customers of US companies, with the goal of promoting US exports and jobs. US Ex-Im Bank’s charter lapsed, for the first time in its 81 year history, on June 30 of this year after Congress failed to pass reauthorizing legislation. From that date, US Ex-Im Bank has continued to manage its existing commitments and to process loans that had been approved by its board prior to its authorization lapsing but has been prohibited from engaging in any new business.

The reauthorization follows months of discussion and political maneuvering in the US Congress. Opponents of US Ex-Im Bank maintain that the bank supports a select number of primarily large corporations in a manner adverse to the operation of a free market system. In contrast, US Ex-Im Bank’s defenders argue that it plays a vital role in supporting US businesses (including small and mid-size businesses) and workers and is necessary for such businesses to compete on a level playing field with companies in other countries that have similar export credit programs.

In July of this year, the US Senate approved its version of a transportation funding bill ([H.R. 22 Engrossed Amendment Senate](#)) originally introduced in January, and at that time a measure to link reauthorization of US Ex-Im Bank to that funding bill passed by a 67-26 vote. However, the House did not act on the Senate’s revised bill immediately, necessitating the passage of several temporary extensions of the funding commitments (ultimately to December 4, 2015) for transportation projects in the US, none of which provided for the reauthorization of US Ex-Im Bank’s activities.

On October 27, Democrats in the House of Representatives, joined by over 40 House Republicans, used a rare procedural maneuver called a “discharge petition” ([H.R. 450](#)) to force a stand-alone reauthorization bill out of committee and to the House floor for a vote. The bill ([H.R. 597](#)) passed in the House by a wide 313-118 margin. Senate Majority Leader Mitch McConnell, however, took the position that the Senate would not vote on a stand-alone reauthorization but would only consider the matter as part of the debate on the broader transportation funding bill. Finally, on November 5, the House approved its version of the transportation

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funding bill ([H.R. 22 Engrossed Amendment House](#)). The House and Senate versions were subsequently reconciled on December 1, and the final bill (titled the “Fixing America’s Surface Transportation Act” or the “FAST Act”) incorporating the US Ex-Im Bank reauthorization provisions (called the “Export-Import Bank Reform and Reauthorization Act of 2015”) passed easily in both the House (by a vote of 359-65) and the Senate (by a vote of 83-16).

The reauthorization provisions anticipate *inter alia* the following:

- a US\$135 billion limit for each of fiscal years 2015 through 2019 on the total amount of loans, guarantees and insurance that US Ex-Im Bank is permitted to have outstanding at any time, a slight decrease in the US\$140 billion aggregate amount authorized for fiscal year 2014, subject to a freeze should the rate of default by bank customers equal or exceed 2% for any quarter (until such time as the rate again falls below such percentage);
- an increase, from 20% to 25%, in the percentage of the aggregate authorized amount referred to above that must be made available to finance exports directly by small business concerns;
- a mandate that US Ex-Im Bank not deny applications for financing, or promulgate or implement policies that discriminate against such applications, based solely on the industry, sector or business concerned (such mandate, however, only applies in respect of applications for projects that involve the “exploration, development, production or export of energy sources and the generation or transmission of electrical power, or combined heat and power, regardless of the energy source involved”);
- a tightening of requirements with respect to fraud control, with a review of the US Ex-Im Bank’s fraud controls and submission of a written report to the US Congress by the Comptroller General of the United States being required every 4 years;
- the establishment of an Office of Ethics to oversee all ethical issues that may arise at the US Ex-Im Bank; and
- the appointment of a Chief Risk Officer to manage all issues of risk to which US Ex-Im Bank may be exposed, and the establishment of a Risk Management Committee to oversee periodic stress testing and monitor exposure levels at the industry, geographic and obligor exposure levels.

The full text of the bill can be found [here](#).

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