

# The counsel's guide for understanding the Ex-Im Bank

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## The bank's current authorization is set to soon expire, and it has both supporters and detractors

The Export-Import Bank of the United States (Ex-Im Bank), the official export credit agency of the United States, is an independent, self-sustaining federal governmental agency with a mission of "supporting American jobs by facilitating the export of U.S. goods and services". Established in 1934, Ex-Im Bank is chartered as a government corporation by the U.S. Congress and was last renewed for a three-year term in 2012. Ex-Im Bank's current authorization is due to expire on June 30, 2015. Much political controversy surrounds Ex-Im Bank, with some on both sides of the political aisle opposing the bank's reauthorization. This article provides background on Ex-Im Bank and its programs, as well as a summary of the views from both sides of the political debate.

### Background

Ex-Im Bank finances the sales of U.S. exports to international buyers through programs offering loans, loan guarantees and insurance. The bank's loan program offers direct financing for qualified purposes. Under the working capital loan guarantee program, Ex-Im Bank provides a guarantee (up to 90 percent, with certain limitations) to a commercial lender to support a loan made by the commercial lender to an exporter for the purpose of financing qualified exports. The bank's medium-term and longer-term guarantee programs provide guarantees to commercial lenders financing the purchase of U.S. manufactured capital goods and equipment for up to 85 percent of the purchase price, subject to qualifications. Under the insurance program, Ex-Im Bank provides insurance (up to 90, 95 or 98 percent, depending on the policy selected and buyer classification) to protect U.S. exporters against non-payment by foreign buyers due to commercial risks (insolvency, bankruptcy or protracted default) or political risks (transfer risk, war, revolution, insurrection, expropriation or cancellation of an import or export license).

Ex-Im Bank support is available for exports to over 155 countries (with certain exceptions), as reflected on the Country Limitation Schedule published by the bank. Countries may be added or removed from the Country Limitation Schedule as political and economic conditions change in these countries.



[Abbey Mansfield Ruby](#) focuses her practice on the representation of lenders, private equity sponsors, private banks, trustees, and corporate borrowers in complex domestic and cross-border financings and related transactions, including acquisition financings, senior secured credit facilities, first and second lien facilities, mezzanine facilities, asset-based facilities, project financings, letter of credit facilities, real estate financings (including EB-5), capital call/subscription facilities, co-investment facilities, and workouts. Ruby also has significant experience with structured notes products and certain domestic banking regulations.

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The bank is prohibited by its charter from competing with private financing, and instead provides credit support for transactions that would otherwise not take place because commercial lenders are either unable or unwilling to accept the political or commercial risks inherent in export transactions. Ex-Im Bank's charter requires that all authorized transactions demonstrate a "reasonable assurance of repayment," and the bank closely monitors credit and other risks in its portfolio. Additionally, transactions must "support creating or supporting U.S. jobs", and detailed economic impact analyses are conducted to identify any possible harms to the U.S. economy from an application for financing.

Ex-Im Bank charges market-based fees to its customers, as well as interest on direct loans. These charges are applied to the cost of the bank's operations (including payments of claims under the loan guarantee and insurance programs) and the funding of the bank's loan loss reserves. Any remaining profits are remitted to the U.S. Department of the Treasury.

### Support for Ex-Im Bank

*Strong past performance:* The performance record of Ex-Im Bank has been very strong. Since 1990, the bank has sent the U.S. Treasury \$6.9 billion more than it received for program and administrative costs. According to the bank's 2014 Annual Report, since 2009, Ex-Im Bank has supported over 1.3 million jobs in communities across the United States. In October 2014, the bank wired \$674.7 million to the U.S. Treasury to support deficit reduction. And, in 2014, Ex-Im Bank authorized \$20.5 billion of financing in support of \$27.5 billion worth of U.S. exports and more than 164,000 American jobs. Finally, Ex-Im Bank boasts a consistently low default rate: As of September 30, 2014, the Bank's default rate reached a historic low at 0.175 percent.

*Support for small businesses:* Small business exporters require certainty and protection to be able to enter new markets to access new customer bases. There is a general reluctance of U.S. commercial banks to finance small exporters, whose business needs, according to proponents of the bank, are only met by taking advantage of Ex-Im Bank's programs. According to the bank's 2014 Annual Report, 90 percent of Ex-Im Bank's authorizations in 2014 directly served American small businesses. Additionally, approximately one in five Bank authorizations in 2014 directly served minority- or women-owned businesses.

*Global competition from other export credit agencies:* All major exporting countries, including America's fiercest competitors in the global marketplace, have their own export credit agencies which support their respective countries' exports. As supporters of Ex-Im Bank point out, Ex-Im Bank is quite small in its support programs by comparison to the export credit agencies of other countries. For example, in 2013, China financed more than \$100 billion of Chinese exports, compared to the Ex-Im Bank's support of \$37.4 billion of U.S. exports. It is also estimated that South Korea, whose economy is less than one-tenth the size of that of the U.S., finances more than \$100 billion per year to support South Korean exports. Without a U.S. export credit agency, American exporters would struggle significantly to compete against foreign exporters who receive credit support from their own countries and who can offer buyer financing on competitive terms.

## Criticism of Ex-Im Bank

*Accounting methodology:* The claim that Ex-Im Bank will continue to earn a profit in the future is debated. Some argue that the bank's accounting methods do not accurately gauge the cost of the bank. The Congressional Budget Office (CBO) recently estimated that the Export-Import Bank would cost taxpayers two billion dollars over ten years if the federal government followed an alternative "fair-value" accounting method. According to Financial Services Committee Chairman Jeb Hensarling (R-TX), who opposes re-authorizing the Export-Import Bank: "If the Export-Import Bank were to use fair-value accounting, as the CBO recommends, the bank's ledger would actually show a loss of money for the taxpayers—not a profit." However, these critics do not dispute the bank's successful performance record from past years, and the current accounting principles used by the bank are required by federal law.

*Corporate welfare:* Critics of the Ex-Im Bank also question the amount of support provided to Boeing, Caterpillar and other giants. In 2012, 82 percent of the bank's loan guarantees were provided to support the purchase of Boeing jets by overseas airlines (up from 65 percent in 2007 and 2008 for Boeing loan guarantees—still an overwhelming majority). As Forbes contributor Doug Bandow wrote in 2014, Ex-Im Bank "piously claims not to provide subsidies since it charges fees and interest, but it exists only to offer businesses a better credit deal than is available in the marketplace." Critics point to the unseen costs created by these "subsidies," including artificially raising the price of new airplanes, as well as the "corporate welfare" provided to large, successful corporations.

*Environmental:* In 2009, the Ex-Im Bank settled a seven-year-long legal proceeding regarding the financial assistance provided to oil and fossil fuel projects and related climate change impacts. Environmental groups say that the Ex-Im Bank is on a "fossil fuel binge," as recent financings provided for an ExxonMobil-led Papua New Guinea liquid gas project, a Sasan Power Ultra Mega Power Project in India and a coal-fired carbon-emitting power plant in South Africa. Conversely, the Ex-Im Bank has also faced scrutiny for pursuing green energy projects, again with claims of "corporate welfare" being voiced.

## Conclusion

When Congress reauthorized Ex-Im Bank in 2012, it required a number of reforms, which have been implemented by the bank. It remains to be seen whether Congress will reauthorize the Ex-Im Bank this June—and if so, what (if any) additional reforms will be imposed. However, it is clear that the disappearance of the bank would have far-reaching implications for U.S. exporters and the broader U.S. and global economies.

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