

112TH CONGRESS
2D SESSION

H. R. 5444

To reauthorize the Export-Import Bank of the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2012

Mr. McDERMOTT introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To reauthorize the Export-Import Bank of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Export-Import Bank
5 Reauthorization Act of 2012”.

6 **SEC. 2. EXTENSION OF AUTHORITY.**

7 Section 7 of the Export-Import Bank Act of 1945
8 (12 U.S.C. 635f) is amended by striking “2011” and in-
9 serting “2021”.

1 **SEC. 3. FOREIGN CREDIT INSURANCE ASSOCIATION.**

2 Section 2(b)(1) of the Export-Import Bank Act of
3 1945 (12 U.S.C. 635(b)(1)) is amended by striking sub-
4 paragraph (F).

5 **SEC. 4. TECHNICAL CORRECTION.**

6 Section 2(b)(2)(B)(ii) of the Export-Import Bank Act
7 of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by strik-
8 ing subclauses (I), (IV), and (VII) and by redesignating
9 subclauses (II), (III), (V), (VI), (VIII), and (IX) as sub-
10 clauses (I), (II), (III), (IV), (V), and (VI), respectively.

11 **SEC. 5. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.**

12 Section 2(b)(9)(B)(iii) of the Export-Import Bank
13 Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by
14 striking “2011” and inserting “2021”.

15 **SEC. 6. AGGREGATE LOAN, GUARANTEE, AND INSURANCE**
16 **AUTHORITY.**

17 Section 6(a)(2) of the Export-Import Bank Act of
18 1945 (12 U.S.C. 635e(a)(2)) is amended—

19 (1) by striking “and” at the end of subpara-
20 graph (D);

21 (2) by striking “2011,” at the end of subpara-
22 graph (E) and inserting “2011, \$100,000,000,000;”;
23 and

24 (3) by adding at the end the following:

25 “(F) during fiscal year 2012,
26 \$120,000,000,000;

1 “(G) during fiscal year 2013,
2 \$140,000,000,000;

3 “(H) during fiscal year 2014,
4 \$160,000,000,000; and

5 “(I) during each of fiscal years 2015
6 through 2021, \$200,000,000,000.”.

7 **SEC. 7. DUAL USE EXPORTS.**

8 Section 4 of Public Law 109–438 (12 U.S.C. 635
9 note; 108 Stat. 4376) is amended by striking “2011” and
10 inserting “2021”.

11 **SEC. 8. MODIFICATIONS TO PROVISIONS RELATING TO TEX-**
12 **TILES.**

13 (a) REPRESENTATION OF THE TEXTILE INDUSTRY
14 ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the
15 Export-Import Bank Act of 1945 (12 U.S.C.
16 635a(d)(1)(B)) is amended by striking “and State govern-
17 ment” and inserting “State government, and the textile
18 industry”.

19 (b) ANNUAL REPORT REGARDING TEXTILE AND AP-
20 PAREL GOODS.—Section 8 of the Export-Import Bank Act
21 of 1945 (12 U.S.C. 635g) is amended by adding at the
22 end the following new subsection:

23 “(g) TEXTILE AND APPAREL SUPPLY CHAIN FI-
24 NANCING.—The Bank shall include in its annual report
25 to the Congress—

1 “(1) a description of the efforts of the Bank to
2 provide financing to the United States textile and
3 apparel industry for exports of textile and apparel
4 goods manufactured in the United States that are
5 used as components in global textile and apparel
6 supply chains; and

7 “(2) the amount of support the Bank provided
8 for the export of textiles and apparel goods for each
9 of the 3 years preceding the report.”.

10 **SEC. 9. REVIEW AND REPORT ON DOMESTIC CONTENT POL-**
11 **ICY.**

12 (a) **IN GENERAL.**—The Export-Import Bank of the
13 United States shall conduct a review of its domestic con-
14 tent policy for medium- and long-term transactions. The
15 review shall examine and evaluate the effectiveness of the
16 Bank’s policy—

17 (1) in maintaining and creating jobs in the
18 United States; and

19 (2) in contributing to a stronger national econ-
20 omy through the export of goods and services.

21 (b) **FACTORS TO CONSIDER.**—In conducting the re-
22 view under subsection (a), the Bank shall consider the fol-
23 lowing:

24 (1) Whether the domestic content policy accu-
25 rately captures the costs of United States production

1 of goods and services, including the direct and indi-
2 rect costs of manufacturing costs, parts, compo-
3 nents, materials and supplies, research, planning,
4 engineering, design, development, production, return
5 on investment, marketing and other business costs
6 and the effect of such policy on the maintenance and
7 creation of jobs in the United States.

8 (2) The ability of the Bank to provide financing
9 that is competitive with the financing provided by
10 foreign export credit agencies and the impact that
11 such financing has in enabling companies with oper-
12 ations in the United States to contribute to a
13 stronger United States economy by increasing em-
14 ployment through the export of goods and services.

15 (3) The effects of the domestic content policy
16 on the manufacturing and service workforce of the
17 United States.

18 (4) Any recommendations the members of the
19 Bank's Advisory Committee have regarding the
20 Bank's domestic content policy.

21 (5) The effect that changes to the Bank's do-
22 mestic content requirements would have in providing
23 companies an incentive to create and maintain oper-
24 ations in the United States and to increase jobs in
25 the United States.

1 (c) REPORT.—Not later than 1 year after the date
2 of the enactment of this Act, the Bank shall submit a re-
3 port on the results of the review conducted under this sec-
4 tion to the Committee on Banking, Housing, and Urban
5 Affairs of the Senate, and the Committee on Financial
6 Services of the House of Representatives.

7 **SEC. 10. STRATEGIC PLAN.**

8 Section 8 of the Export-Import Bank Act of 1945
9 (12 U.S.C. 635g), as amended by section 8, is further
10 amended by adding at the end the following new sub-
11 section:

12 “(h) STRATEGIC PLAN FOR THE BANK.—

13 “(1) IN GENERAL.—The Bank shall include in
14 its annual report to the Congress under subsection
15 (a) of this section, not less than every 4 years, be-
16 ginning in 2012, a 5-year strategic plan that pro-
17 vides—

18 “(A) a comprehensive mission statement
19 covering the major functions and operations of
20 the Bank;

21 “(B) general goals and objectives, includ-
22 ing outcome-oriented goals, for the major func-
23 tions of the Bank;

24 “(C) a description of the Bank’s highest-
25 priority goals and how they can be achieved

1 within the 5-year plan period, according to
2 clearly defined milestones; and

3 “(D) a description of how the goals and
4 objectives incorporate views and suggestions ob-
5 tained through congressional consultations.

6 “(2) PROGRESS.—The progress the Bank is
7 making in meeting the milestones established by the
8 strategic plan shall be updated in each annual report
9 the Bank submits to the Congress.

10 “(3) AVAILABILITY OF ANNUAL REPORT.—The
11 Bank shall make its annual report available on its
12 public website.”.

13 **SEC. 11. REVIEW AND REPORT ON BANK’S INFORMATION**
14 **TECHNOLOGY INFRASTRUCTURE.**

15 (a) IN GENERAL.—Not later than 180 days after the
16 date of the enactment of this Act, the Export-Import
17 Bank of the United States shall conduct a review of the
18 Bank’s information technology infrastructure and report
19 to Congress on—

20 (1) how the Bank will modernize and continue
21 to maintain the technology infrastructure, taking
22 into consideration commercially available tech-
23 nologies or other cost-saving measures; and

24 (2) how modernization, maintenance, and other
25 cost-saving measures will result—

1 (A) in improved service delivery to cus-
2 tomers of the Bank;

3 (B) in generally improving the Bank's per-
4 formance; and

5 (C) in mitigating taxpayer exposure to
6 losses.

7 **SEC. 12. STUDY BY THE COMPTROLLER GENERAL ON RISK**
8 **MANAGEMENT.**

9 (a) IN GENERAL.—Not later than 18 months after
10 the date of the enactment of this Act, the Comptroller
11 General of the United States shall complete and submit
12 to the Export-Import Bank of the United States, the Com-
13 mittee on Banking, Housing, and Urban Affairs of the
14 Senate, and the Committee on Financial Services of the
15 House of Representatives a report—

16 (1) on the financial position of the Bank and
17 the risks it poses for American taxpayers; and

18 (2) that contains recommendations to the Bank
19 on how to properly account for risk and ensure the
20 solvency of the Bank.

21 (b) REPORT.—The report submitted under subsection
22 (a) shall evaluate—

23 (1) the effectiveness of the Bank's risk manage-
24 ment;

1 (2) the adequacy of the Bank’s loan loss re-
2 serves;

3 (3) the exposure and potential for exposure to
4 losses from each of the products offered by the
5 Bank;

6 (4) the overall risk of the Bank’s portfolio, tak-
7 ing into account—

8 (A) market risk;

9 (B) credit risk;

10 (C) political risk;

11 (D) industry-concentration risk;

12 (E) geographic-concentration risk;

13 (F) obligor-concentration risk; and

14 (G) foreign-currency risk;

15 (5) the Bank’s use of historical default and re-
16 covery rates to calculate future program costs, tak-
17 ing into consideration cost estimates determined
18 under the Federal Credit Reform Act of 1990 (2
19 U.S.C. 661 et seq.) and whether discount rates ap-
20 plied to cost estimates should reflect the risks de-
21 scribed in paragraph (4);

22 (6) the fees charged by the Bank for the prod-
23 ucts the Bank offers, whether the Bank’s fees prop-
24 erly reflect the risks described in paragraph (4), and

1 how the fees are affected by United States participa-
2 tion in international agreements; and

3 (7) whether the Bank's loan loss reserves policy
4 is sufficient to cover the risks described in para-
5 graph (4).

6 (c) **RECOMMENDATIONS AND REPORT BY THE**
7 **BANK.**—If the Bank does not adopt the recommendations
8 provided under subsection (a) by the Comptroller General,
9 the Bank shall submit to Congress, not later than 60 days
10 after the Bank receives the report, a report on why the
11 Bank has not adopted the recommendations.

12 **SEC. 13. RENEWABLE ENERGY AND ENERGY EFFICIENCY**
13 **TECHNOLOGIES.**

14 (a) **IN GENERAL.**—The Export-Import Bank of the
15 United States should work to increase the export of renew-
16 able energy technologies and end-use energy efficiency
17 technologies with a goal of significantly expanding, year-
18 after-year, the Bank's annual aggregate loan, guarantee,
19 and insurance authorizations supporting those tech-
20 nologies.

21 (b) **INCREASED REPORTING REQUIREMENTS.**—The
22 Export-Import Bank of the United States shall include in
23 its annual report to the Congress an analysis of any bar-
24 riers to realizing the Bank's congressional directive to in-
25 crease the Bank's financing for renewable energy tech-

1 nology and end-use energy efficiency technology and any
2 tools the Bank needs to assist the Bank in overcoming
3 those barriers. The analysis shall include barriers such
4 as—

- 5 (1) inadequate staffing;
- 6 (2) inadequate financial products;
- 7 (3) lack of capital authority; and
- 8 (4) limitations imposed by domestic markets.

9 **SEC. 14. TRANSPARENCY AND ACCOUNTABILITY OF BANK**
10 **FINANCING.**

11 Section 2(b) of the Export-Import Bank Act of 1945
12 (12 U.S.C. 635(b)) is amended by inserting after para-
13 graph (3) the following new paragraph:

14 “(3A) **TRANSPARENCY AND ACCOUNTABILITY OF**
15 **BANK FINANCING.**—

16 “(A) **PREAPPROVAL NOTICE.**—Not later than
17 14 days before any meeting of the Board of Direc-
18 tors for final approval of a transaction the value of
19 which exceeds \$100,000,000, and concurrent with
20 any statement required to be submitted under para-
21 graph (3) with respect to the transaction, the Bank
22 shall post a notice on the Bank’s website that in-
23 cludes—

24 “(i) a description of the transaction pro-
25 posed to be financed;

1 “(ii) the identities of the obligor, principal
2 supplier, and guarantor involved in the trans-
3 action; and

4 “(iii) a description of any item with respect
5 to which Bank financing is being sought.

6 “(B) MANNER OF DISCLOSURE.—Any informa-
7 tion required to be disclosed under subparagraph
8 (A) shall be disclosed in a manner that does not dis-
9 close any information that is confidential or propri-
10 etary business information, that would violate sec-
11 tion 1905 of title 18, United States Code (commonly
12 referred to as the ‘Trade Secrets Act’), or that
13 would jeopardize jobs in the United States by sup-
14 plying information which competitors could use to
15 compete with companies in the United States.

16 “(C) POST CONSIDERATION.—Not later than 30
17 days after the final approval of a transaction the
18 value of which exceeds \$100,000,000, the Bank shall
19 post a notice on the Bank’s website that includes the
20 information required under subparagraph (A) in a
21 manner that complies with subparagraph (B).”.

22 **SEC. 15. ANNUAL COMPETITIVENESS REPORT.**

23 Section 8A(a) of the Export-Import Bank Act of
24 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the
25 end the following:

1 “(11) CASE PROCESSING.—A separate section
2 detailing the Bank’s annual survey of exporters, fi-
3 nancial institutions, and brokers regarding the
4 Bank’s processing of transactions, timeliness in re-
5 viewing transactions and processing applications, ad-
6 herence to financial standards, clarity and ease of
7 use of applications, and general customer service
8 during the application and approval process for each
9 of the Bank’s major programs.

10 “(12) OPERATIONS.—A separate section detail-
11 ing the Bank’s annual survey of exporters, financial
12 institutions, and brokers regarding the Bank’s docu-
13 mentation requirements, certifications, and proc-
14 essing of applications for medium- and long-term
15 program transactions compared to the processing of
16 applications by other export credit agencies.

17 “(13) PROCESS IMPROVEMENT.—A description
18 of the recommendations made by the Bank’s Advi-
19 sory Committee and the advisory committee on Sub-
20 Saharan Africa established under section 2(b)(9)(B)
21 regarding improving the Bank’s processing of trans-
22 actions and customer service. The Bank shall make
23 every reasonable effort to act on the recommenda-
24 tions of the advisory committees and shall include a

1 separate section detailing the actions taken by the
2 Bank to comply with the recommendations.”.

3 **SEC. 16. ANNUAL REPORT ON INTERNATIONAL COMPETI-**
4 **TIVENESS AND IMPACT ON JOBS OF THE EX-**
5 **PORT-IMPORT BANK.**

6 Not later than 270 days after the date of the enact-
7 ment of this Act, the Comptroller General shall issue a
8 report describing the following:

- 9 (1) The ways in which the Export-Import Bank
10 of the United States compares to the export credit
11 agencies of all the other developed and middle-in-
12 come countries that have such agencies, including
13 the industries covered, the amount of financing pro-
14 vided by the agencies as compared to the total value
15 of exports, the quality of packaging of financing and
16 the effects of the support on completed competitive
17 transactions, the overall level and types of support
18 offered by the agencies, and the policy direction of
19 each such country with respect to its export credit
20 agency and their support of their domestic export
21 promotion compared to those services provided by
22 the Export-Import Bank of the United States; and
- 23 (2) The estimated net gains in employment in
24 the United States enabled by the support provided
25 by the Export-Import Bank of the United States on

1 an annual basis, by sector and, to the extent pos-
2 sible, by State.

3 **SEC. 17. PROHIBITIONS ON FINANCING FOR CERTAIN PER-**
4 **SONS INVOLVED IN SANCTIONABLE ACTIVI-**
5 **TIES WITH RESPECT TO IRAN.**

6 (a) PROHIBITION ON FINANCING FOR PERSONS
7 THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVI-
8 TIES.—

9 (1) IN GENERAL.—Beginning on the date that
10 is 180 days after the date of the enactment of this
11 Act, the Board of Directors of the Export-Import
12 Bank of the United States may not approve any
13 transaction that is subject to approval by the Board
14 with respect to the provision by the Bank of any
15 guarantee, insurance, or extension of credit, or the
16 participation by the Bank in any extension of credit,
17 to a person in connection with the exportation of any
18 good or service unless the person makes the certifi-
19 cation described in paragraph (2).

20 (2) CERTIFICATION DESCRIBED.—The certifi-
21 cation described in this paragraph is a certification
22 by a person—

23 (A) that neither the person nor any other
24 person owned or controlled by the person—

1 (i) engages in any activity described
2 in section 5(a) of the Iran Sanctions Act
3 of 1996 (Public Law 104–172; 50 U.S.C.
4 1701 note) for which the person may be
5 subject to sanctions under that Act;

6 (ii) exports sensitive technology, as
7 defined in section 106 of the Comprehen-
8 sive Iran Sanctions, Accountability, and
9 Divestment Act of 2010 (22 U.S.C. 8515),
10 to Iran; or

11 (iii) engages in any activity prohibited
12 by part 560 of title 31, Code of Federal
13 Regulations (commonly known as the “Ira-
14 nian Transactions Regulations”), unless
15 the activity is disclosed to the Office of
16 Foreign Assets Control of the Department
17 of the Treasury when the activity is discov-
18 ered; or

19 (B) if the person or any other person
20 owned or controlled by the person has engaged
21 in an activity described in subparagraph (A),
22 that—

23 (i) in the case of an activity described
24 in subparagraph (A)(i)—

1 (I) the President has waived the
2 imposition of sanctions with respect to
3 the person that engaged in that activ-
4 ity pursuant to section 4(c), 6(b)(5),
5 or 9(c) of the Iran Sanctions Act of
6 1996 (Public Law 104–172; 50
7 U.S.C. 1701 note);

8 (II)(aa) the President has in-
9 voked the special rule described in
10 section 4(e)(3) of that Act with re-
11 spect to the person that engaged in
12 that activity; or

13 (bb)(AA) the person that en-
14 gaged in that activity determines,
15 based on its best knowledge and be-
16 lief, that the person meets the criteria
17 described in subparagraph (A) of such
18 section 4(e)(3) and has provided to
19 the President the assurances de-
20 scribed in subparagraph (B) of that
21 section; and

22 (BB) the Secretary of State has
23 issued an advisory opinion to that per-
24 son that the person meets such cri-

1 teria and has provided to the Presi-
2 dent those assurances; or

3 (III) the President has deter-
4 mined that the criteria have been met
5 for the exception provided for under
6 section 5(a)(3)(C) of the Iran Sanc-
7 tions Act of 1996 to apply with re-
8 spect to the person that engaged in
9 that activity; or

10 (ii) in the case of an activity described
11 in subparagraph (A)(ii), the President has
12 waived, pursuant to section 401(b)(1) of
13 the Comprehensive Iran Sanctions, Ac-
14 countability, and Divestment Act of 2010
15 (22 U.S.C. 8551(b)(1)), the application of
16 the prohibition under section 106(a) of
17 that Act (22 U.S.C. 8515(a)) with respect
18 to that person.

19 (b) PROHIBITION ON FINANCINGS.—Beginning on
20 the date that is 180 days after the date of the enactment
21 of this Act, the Board of Directors of the Export-Import
22 Bank of the United States may not approve any trans-
23 action that is subject to approval by the Board with re-
24 spect to the provision by the Bank of any guarantee, in-
25 surance, or extension of credit, or the participation by the

1 Bank in any extension of credit, in connection with a fi-
2 nancing in which a person that is a borrower or controlling
3 sponsor, or a person that is owned or controlled by such
4 borrower or controlling sponsor, is subject to sanctions
5 under section 5(a) of the Iran Sanctions Act of 1996
6 (Public Law 104–172; 50 U.S.C. 1701 note).

7 (c) ADVISORY OPINIONS.—

8 (1) AUTHORITY.—The Secretary of State is au-
9 thorized to issue advisory opinions described in sub-
10 section (a)(2)(B)(i)(II).

11 (2) NOTICE TO CONGRESS.—If the Secretary
12 issues an advisory opinion pursuant to paragraph
13 (1), the Secretary shall notify the appropriate con-
14 gressional committees of the opinion not later than
15 30 days after issuing the opinion.

16 (d) DEFINITIONS.—In this section:

17 (1) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES; PERSON.—The terms “appropriate congres-
19 sional committees” and “person” have the meanings
20 given those terms in section 14 of the Iran Sanc-
21 tions Act of 1996 (Public Law 104–172; 50 U.S.C.
22 1701 note).

23 (2) CONTROLLING SPONSOR.—The term “con-
24 trolling sponsor” means a person providing control-
25 ling direct private equity investment (excluding in-

1 vestments made through publicly held investment
2 funds, publicly held securities, public offerings, or
3 similar public market vehicles) in connection with a
4 financing.

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