

114TH CONGRESS
1ST SESSION

H. R. 3847

To provide for reforms of the Export-Import Bank of the United States.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2015

Mr. ISSA (for himself, Mr. PETERSON, and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for reforms of 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 Reform Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—IMPROVING TRANSPARENCY OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

Sec. 101. Review of Bank product pricing and credit standards to avoid crowd-
ing out of private export finance.

Sec. 102. Prohibited countries.

- Sec. 103. Employee certification and financial disclosure.
- Sec. 104. Parallel GAAP reporting.
- Sec. 105. Making the Bank the lender of last resort for loans, attempting private financing first.
- Sec. 106. Audit committee.
- Sec. 107. Report on privatizing the Bank.
- Sec. 108. Independent audit of Bank portfolio.

TITLE II—IMPROVING THE ACCOUNTABILITY OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

- Sec. 201. Earnings retention.
- Sec. 202. Office of the President and term limits.
- Sec. 203. Repayment as priority.
- Sec. 204. Limitations on outstanding loans, guarantees, and insurance.
- Sec. 205. Credit risk.

TITLE III—JOB GROWTH

- Sec. 301. Medium-sized enterprises.
- Sec. 302. Inflation adjustment.

1 **TITLE I—IMPROVING TRANS-** 2 **PARENCY OF THE EXPORT-IM-** 3 **PORT BANK OF THE UNITED** 4 **STATES**

5 **SEC. 101. REVIEW OF BANK PRODUCT PRICING AND CRED-** 6 **IT STANDARDS TO AVOID CROWDING OUT OF** 7 **PRIVATE EXPORT FINANCE.**

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

11 “(1) REPORTS ON PRIVATE EXPORT FINANCING AND
12 BANK PRICING AND CREDIT STANDARDS.—

13 “(1) PRIVATE EXPORT FINANCING.—The Board
14 of Governors of the Federal Reserve System shall
15 issue a semiannual report to the Congress on the
16 terms and conditions (including interest rates, matu-

1 rities, and credit standards) that apply in the provi-
2 sion of export finance by private financial institu-
3 tions.

4 “(2) BANK PRICING AND CREDIT STAND-
5 ARDS.—The Bank shall issue an annual report to
6 the Congress on the steps taken by the Bank to ad-
7 just the pricing of products offered, and the credit
8 standards used, by the Bank to avoid crowding out
9 private export finance.”.

10 **SEC. 102. PROHIBITED COUNTRIES.**

11 Section 8 of the Export-Import Bank Act of 1945
12 (12 U.S.C. 635g), as amended by section 101 of this Act,
13 is amended by adding at the end the following:

14 “(m) RECOMMENDATIONS REGARDING PROHIBITED
15 COUNTRIES.—The Board of Directors of the Bank, in
16 consultation with Congress, the President, and the Sec-
17 retary of State, shall develop recommendations annually
18 regarding the countries with whom and in which the Bank
19 should not be doing business, and the Bank shall include
20 the recommendations in its annual report to the Congress
21 under subsection (a).”.

1 **SEC. 103. EMPLOYEE CERTIFICATION AND FINANCIAL DIS-**
2 **CLOSURE.**

3 Section 3(e) of the Export-Import Bank Act of 1945
4 (12 U.S.C. 635a(e)) is amended by adding at the end the
5 following:

6 “(3) ETHICS.—

7 “(A) CODE OF ETHICS.—

8 “(i) IN GENERAL.—The Chief Ethics
9 Officer shall draft a Code of Ethics that
10 sets out strict and definite standards of of-
11 ficial conduct for all Bank directors, offi-
12 cers, and employees, which Code shall in-
13 clude a policy that prohibits conflicts of in-
14 terest, as described in paragraph (1) of
15 this subsection, and other policies, prohibi-
16 tions, and restrictions that the Chief Eth-
17 ics Officer deems appropriate.

18 “(ii) CONSIDERATIONS.—In drafting
19 the Code of Ethics, the Chief Ethics Offi-
20 cer shall consider the Principles of Ethical
21 Conduct for Government Officers and Em-
22 ployee set forth in Executive Order 12731
23 (Oct. 17, 1990).

24 “(iii) CONSISTENCY WITH ETHICS IN
25 GOVERNMENT ACT OF 1978.—The Chief
26 Ethics Officer shall ensure that the Code

1 of Ethics is consistent with the Ethics in
2 Government Act of 1978 and the regula-
3 tions promulgated under such Act.

4 “(iv) EFFECTIVENESS; AMEND-
5 MENT.—The Code of Ethics (and an
6 amendment to the Code) shall take effect
7 on approval by the Board. The Code of
8 Ethics may be amended only on the rec-
9 ommendation of the Chief Ethics Officer.

10 “(v) ANNUAL EMPLOYEE CERTIFI-
11 CATIONS.—The Board, in consultation with
12 the Chief Ethics Officer, shall implement a
13 policy that requires all Bank directors, of-
14 ficers, and employees to certify annually
15 that they have read, understand, and com-
16 plied with and will continue to comply with
17 the Code of Ethics. The annual certifi-
18 cations shall contain a statement that noti-
19 fies the signatory that section 1001 of title
20 18, United States Code, applies to the cer-
21 tification.

22 “(B) FINANCIAL DISCLOSURE.—

23 “(i) IN GENERAL.—Within 180 days
24 after the date of the enactment of this
25 paragraph, the Board, in consultation with

1 the Chief Ethics Officer, shall prepare a fi-
2 nancial disclosure form for Covered Indi-
3 viduals, which form shall—

4 “(I) require information about
5 assets, income, debts, and any other
6 financial information that the Board
7 deems appropriate for ensuring that a
8 Covered Individual is in compliance
9 with the Code of Ethics established
10 under subparagraph (A); and

11 “(II) be no less extensive than fi-
12 nancial reports required to be filed
13 under title I of the Ethics in Govern-
14 ment Act of 1978 and the regulations
15 promulgated under such Act.

16 “(ii) FINANCIAL REPORTING POL-
17 ICY.—The Board, in consultation with the
18 Chief Ethics Officer, shall implement a
19 policy that—

20 “(I) requires each Covered Indi-
21 vidual and the spouse of the Covered
22 Individual to annually complete the fi-
23 nancial disclosure form and submit
24 the completed form to the General

Counsel or his or her designee for review; and

“(II) allows any Covered Individual who is required to file financial reports under title I of the Ethics in Government Act of 1978 or any other Federal law to file the financial reports under such title or other law in lieu of the financial disclosure form described in this subparagraph, but the Board may require those who do so to supplement the financial report with all information required to be disclosed under this subparagraph.

“(iii) COVERED INDIVIDUAL DEFINED.—In this subparagraph, the term ‘Covered Individual’ means any Bank director, officer, employee, or contractor with the ability to affect any Bank decision relating to financing, funding, insuring, or otherwise providing backing to any company or project.

“(iv) AVAILABILITY OF COMPLETED FINANCIAL DISCLOSURE FORMS.—

1 “(I) IN GENERAL.—The Bank
2 shall make completed financial disclo-
3 sure forms available to the Office of
4 Inspector General for the Bank.

5 “(II) PROHIBITIONS.—A com-
6 pleted financial disclosure form shall
7 not be made available—

8 “(aa) to another Bank direc-
9 tor, officer, employee, attorney,
10 or agent, except as necessary to
11 ensure compliance of a Covered
12 Individual with this subpara-
13 graph, the Code of Ethics, or any
14 applicable law; or

15 “(bb) to the public.

16 “(C) RULE OF INTERPRETATION.—Noth-
17 ing in this paragraph shall supersede, modify,
18 change, or otherwise affect any requirement,
19 procedure, or restriction applicable to a Bank
20 employee, officer, or director under the Ethics
21 in Government Act of 1978 that applies in ad-
22 dition to the requirements, procedures, and re-
23 strictions applicable to a Bank employee, offi-
24 cer, or director under this paragraph.”.

1 **SEC. 104. PARALLEL GAAP REPORTING.**

2 Section 8 of the Export-Import Bank Act of 1945
3 (12 U.S.C. 635g), as amended by sections 101 and 102
4 of this Act, is amended by adding at the end the following:

5 “(n) PARALLEL GAAP REPORTING.—With any re-
6 port issued by the Bank to the Congress or any committee
7 of the Congress that contains accounting information that
8 is not prepared using generally accepted accounting prin-
9 ciples, the Bank shall issue a 2nd report providing the
10 same accounting information prepared using generally ac-
11 cepted accounting principles.”.

12 **SEC. 105. MAKING THE BANK THE LENDER OF LAST RE-**
13 **SORT FOR LOANS, ATTEMPTING PRIVATE FI-**
14 **NANCING FIRST.**

15 Section 2 of the Export-Import Bank Act of 1945
16 (12 U.S.C. 635) is amended by adding at the end the fol-
17 lowing:

18 “(l) APPLICANTS FOR BANK ASSISTANCE REQUIRED
19 TO DEMONSTRATE INABILITY TO OBTAIN CREDIT ELSE-
20 WHERE.—The Bank shall not guarantee, insure, or extend
21 credit, or participate in an extension of credit in connec-
22 tion with a transaction, to a privately owned foreign appli-
23 cant, other than a financial institution, unless the appli-
24 cant demonstrates to the Bank that—

25 “(1) the applicant has sought, and has been un-
26 able to obtain, competitive financing for the trans-

1 action without any support from the Overseas Pri-
 2 vate Investment Corporation or the Small Business
 3 Administration; or

4 “(2) financing from a foreign export credit
 5 agency is available to the applicant to support com-
 6 parable foreign goods and services competing with
 7 the United States exports that would be financed by
 8 the Bank through the application.”.

9 **SEC. 106. AUDIT COMMITTEE.**

10 Section 3(c) of the Export-Import Bank Act of 1945
 11 (12 U.S.C. 635a(c)) is amended by redesignating para-
 12 graph (10) as paragraph (11) and inserting after para-
 13 graph (9) the following:

14 “(10) AUDIT COMMITTEE.—

15 “(A) MEMBERSHIP.—

16 “(i) IN GENERAL.—In addition to such
 17 other duties as they may be appointed to per-
 18 form under subparagraph (5), the directors who
 19 are neither Chairman nor Vice Chairman of the
 20 Board shall constitute the Audit Committee of
 21 the Board.

22 “(ii) SPECIAL RULE.—If that there is only
 23 1 director who is neither Chairman nor Vice
 24 Chairman of the Board, the Chief Risk Officer
 25 of the Bank shall be a temporary member of

1 the Audit Committee until a 2nd Bank director
2 who is neither Chairman nor Vice Chairman of
3 the Board is appointed to the Board.

4 “(B) DUTIES.—

5 “(i) Within 1 year after the date of the en-
6 actment of this paragraph, the Audit Com-
7 mittee shall develop and implement a program
8 to audit, on a regular and routine basis, the
9 loan, guarantee, insurance, and credit programs
10 of the Bank.

11 “(ii) The Audit Committee shall—

12 “(I) provide assistance to the Board
13 in fulfilling the accounting and reporting
14 responsibilities of the Board;

15 “(II) evaluate whether the Bank has
16 adequate administrative and financial con-
17 trols;

18 “(III) review the financial statements
19 prepared by management for distribution
20 to the Congress and the public; and

21 “(IV) provide direction over the inter-
22 nal audit function and the independent ac-
23 countants of the Bank.

24 “(C) REPORTS.—The Audit Committee shall re-
25 port to the Board regularly on its activities but may

1 act independently of the Chairman and Vice Chair-
 2 man.

3 “(D) PROCEDURAL RULES.—

4 “(i) QUORUM.—Two members shall con-
 5 stitute a quorum of the Audit Committee.

6 “(ii) ACTION ONLY BY MAJORITY VOTE.—

7 The Audit Committee may act only by majority
 8 vote.”.

9 **SEC. 107. REPORT ON PRIVATIZING THE BANK.**

10 Within 270 days after the date of the enactment of
 11 this Act, the President, in consultation with the Advisory
 12 Committee of the Bank, the Comptroller of the Currency,
 13 and the Governors of the Federal Reserve Board, shall
 14 submit to the Committees on Appropriations and Finan-
 15 cial Services of the House of Representatives and the
 16 Committees on Appropriations and Banking, Housing,
 17 and Urban Affairs of the Senate a report on the programs
 18 of the Bank that may be fully or partially privatized,
 19 which report shall—

20 (1) consider, but not be limited to, the estab-
 21 lishment of a public-private partnership to create a
 22 market window, as allowed under Section 15 of the
 23 Export-Import Bank Act of 1945, to compete
 24 against similar foreign-supported market windows to
 25 maximize private-sector participation;

1 (2) include an evaluation of whether the admin-
2 istration of the insurance and working-capital pro-
3 grams of the Bank could be partially or completely
4 privatized; and

5 (3) include an analysis of the current regulatory
6 restrictions related to capital-allocation requirements
7 for pre-export working capital and cross-border lend-
8 ing in amounts exceeding \$25,000,000.

9 **SEC. 108. INDEPENDENT AUDIT OF BANK PORTFOLIO.**

10 (a) AUDIT.—The Inspector General of the Export-
11 Import Bank of the United States shall conduct an audit
12 of the portfolio risk management procedures of the Bank,
13 including a review of the implementation by the Bank of
14 the duties assigned to the Chief Risk Officer under the
15 Export-Import Bank Act of 1945.

16 (b) REPORT.—Not later than 1 year after the ap-
17 pointment of the Chief Risk Officer of the Export-Import
18 Bank of the United States, the Inspector General shall sub-
19 mit to the Committee on Financial Services of the House
20 of Representatives and the Committee on Banking, Hous-
21 ing, and Urban Affairs of the Senate a written report con-
22 taining all findings and determinations made in carrying
23 out subsection (a).

1 **TITLE II—IMPROVING THE AC-**
2 **COUNTABILITY OF THE EX-**
3 **PORT-IMPORT BANK OF THE**
4 **UNITED STATES**

5 **SEC. 201. EARNINGS RETENTION.**

6 Section 2(a)(1) of the Export-Import Bank Act of
7 1945 (12 U.S.C. 635(a)(1)) is amended by striking “Net
8 earnings of the Bank after reasonable provision for pos-
9 sible losses shall be used for payment of dividends on cap-
10 ital stock.” and inserting “The Bank shall retain not less
11 than 30 percent of total net earnings as a provision for
12 possible losses. Notwithstanding the previous sentence,
13 during any period when the aggregate of such retained
14 earnings is less than 10 percent of the applicable amount
15 (as defined under section 6(a)(2)), the Bank shall retain
16 not less than 80 percent of total net earning as a provision
17 for possible losses. Net earnings that are not retained as
18 a provision for possible losses shall be used for payment
19 of dividends on capital stock.”.

20 **SEC. 202. OFFICE OF THE PRESIDENT AND TERM LIMITS.**

21 Section 3 of the Export-Import Bank Act of 1945
22 (12 U.S.C. 635a) is amended—

23 (1) in subsection (b), by inserting “who shall be
24 chosen from among those individuals with at least

1 15 years of banking experience,” before “and who
2 shall serve as chief executive”; and

3 (2) in subsection (c)(8)(A)—

4 (A) in clause (iii), by striking “and” at the
5 end;

6 (B) in clause (iv), by striking the period at
7 the end and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(v) no person may serve as the President of
10 the Bank for more than 2 terms.”.

11 **SEC. 203. REPAYMENT AS PRIORITY.**

12 Section 2(b)(1) of the Export-Import Bank Act of
13 1945 (12 U.S.C. 635(b)(1)) is amended—

14 (1) in subparagraph (B), by striking “, that
15 loans, so far as possible consistent with the carrying
16 out of the purposes of subsection (a) of this section,
17 shall generally be for specific purposes, and, in the
18 judgment of the Board of Directors, offer reasonable
19 assurance of repayment”; and

20 (2) by striking subparagraph (C) and inserting
21 the following:

22 “(C) The Bank shall conduct all programs
23 of the Bank in a manner that, in the judgment
24 of the Board of Directors, offers reasonable as-
25 surance of repayment and minimizes risk of

1 loss. Loans made by the Bank shall be for spe-
2 cific purposes.”.

3 **SEC. 204. LIMITATIONS ON OUTSTANDING LOANS, GUARAN-**
4 **TEES, AND INSURANCE.**

5 Section 6(a)(2) of the Export-Import Bank Act of
6 1945 (12 U.S.C. 635e(a)(2)) is amended to read as fol-
7 lows:

8 “(2) APPLICABLE AMOUNT.—In paragraph (1),
9 the term ‘applicable amount’ means
10 \$130,000,000,000.”.

11 **SEC. 205. CREDIT RISK.**

12 Section 2(b)(1)(A) of the Export-Import Bank Act
13 of 1945 (12 U.S.C. 635(b)(1)(A)) is amended by inserting
14 after “(as defined in section 10(h)(3))” the following: “,
15 provided that this objective is accomplished in a manner
16 calculated to minimize financial risk to the Bank”.

17 **TITLE III—JOB GROWTH**

18 **SEC. 301. MEDIUM-SIZED ENTERPRISES.**

19 Section 2(b)(1)(F) of the Export-Import Bank Act
20 of 1945 (12 U.S.C. 635(b)(1)(F)) is amended to read as
21 follows:

22 “(F) FAIR CONSIDERATION FOR MEDIUM-SIZED EN-
23 TERPRISES.—In addition to the programs of the Bank to
24 encourage the participation of small businesses in inter-
25 national commerce, the policies of the Bank shall give fair

1 consideration to making loans and providing guarantees
2 for the export of goods and services by medium-sized en-
3 terprises.”.

4 **SEC. 302. INFLATION ADJUSTMENT.**

5 Section 12 of the Export-Import Bank Act of 1945
6 (12 U.S.C. 635i–6) is amended to read as follows:

7 **“SEC. 12. INFLATION ADJUSTMENT.**

8 “Beginning on the date on which the Bureau of
9 Labor Statistics of the Department of Labor first pub-
10 lishes the Consumer Price Index after the date that is 1
11 year after the date of the enactment of this section, and
12 annually thereafter, the Bank shall adjust all dollar
13 amounts specified in this Act by the percentage change
14 in the Consumer Price Index published on that date from
15 the Consumer Price Index published the previous year.”.

○