AMENDMENT TO THE SENATE AMENDMENTS TO
H.R. 22
OFFERED BY MR. ISSA OF CALIFORNIA

Page 1032, after line 4, insert the following:

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

SEC. 96001. REVIEW OF BANK PRODUCT PRICING AND CREDIT STANDARDS TO AVOID CROWDING OUT OF PRIVATE EXPORT FINANCE.

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

“(l) REPORTS ON PRIVATE EXPORT FINANCING AND BANK PRICING AND CREDIT STANDARDS.—

“(1) PRIVATE EXPORT FINANCING.—The Board of Governors of the Federal Reserve System shall issue a semiannual report to the Congress on the terms and conditions (including interest rates, maturities, and credit standards) that apply in the provision of export finance by private financial institutions.
“(2) Bank pricing and credit standards.—The Bank shall issue an annual report to the Congress on the steps taken by the Bank to adjust the pricing of products offered, and the credit standards used, by the Bank to avoid crowding out private export finance.”.

SEC. 96002. PROHIBITED COUNTRIES.
Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 96001 of this Act, is amended by adding at the end the following:

“(m) Recommendations Regarding Prohibited Countries.—The Board of Directors of the Bank, in consultation with Congress, the President, and the Secretary of State, shall develop recommendations annually regarding the countries with whom and in which the Bank should not be doing business, and the Bank shall include the recommendations in its annual report to the Congress under subsection (a).”.

SEC. 96003. EMPLOYEE CERTIFICATION AND FINANCIAL DISCLOSURE.
Section 3(e) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(e)) is amended by adding at the end the following:

“(3) Ethics.—

“(A) Code of ethics.—
“(i) IN GENERAL.—The Chief Ethics Officer shall draft a Code of Ethics that sets out strict and definite standards of official conduct for all Bank directors, officers, and employees, which Code shall include a policy that prohibits conflicts of interest, as described in paragraph (1) of this subsection, and other policies, prohibitions, and restrictions that the Chief Ethics Officer deems appropriate.

“(ii) CONSIDERATIONS.—In drafting the Code of Ethics, the Chief Ethics Officer shall consider the Principles of Ethical Conduct for Government Officers and Employee set forth in Executive Order 12731 (Oct. 17, 1990).

“(iii) CONSISTENCY WITH ETHICS IN GOVERNMENT ACT OF 1978.—The Chief Ethics Officer shall ensure that the Code of Ethics is consistent with the Ethics in Government Act of 1978 and the regulations promulgated under such Act.

“(iv) EFFECTIVENESS; AMENDMENT.—The Code of Ethics (and an amendment to the Code) shall take effect
on approval by the Board. The Code of Ethics may be amended only on the recommendation of the Chief Ethics Officer.

“(v) ANNUAL EMPLOYEE CERTIFICATIONS.—The Board, in consultation with the Chief Ethics Officer, shall implement a policy that requires all Bank directors, officers, and employees to certify annually that they have read, understand, and complied with and will continue to comply with the Code of Ethics. The annual certifications shall contain a statement that notifies the signatory that section 1001 of title 18, United States Code, applies to the certification.

“(B) FINANCIAL DISCLOSURE.—

“(i) IN GENERAL.—Within 180 days after the date of the enactment of this paragraph, the Board, in consultation with the Chief Ethics Officer, shall prepare a financial disclosure form for Covered Individuals, which form shall—

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

“(II) be no less extensive than financial reports required to be filed under title I of the Ethics in Government Act of 1978 and the regulations promulgated under such Act.

“(ii) FINANCIAL REPORTING POLICY.—The Board, in consultation with the Chief Ethics Officer, shall implement a policy that—

“(I) requires each Covered Individual and the spouse of the Covered Individual to annually complete the financial disclosure form and submit 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 re-
ports 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.—

“(I) In general.—The Bank shall make completed financial disclosure forms available to the Office of Inspector General for the Bank.

“(II) Prohibitions.—A completed financial disclosure form shall not be made available—
“(aa) to another Bank director, officer, employee, attorney, or agent, except as necessary to ensure compliance of a Covered Individual with this subparagraph, the Code of Ethics, or any applicable law; or

“(bb) to the public.

“(C) Rule of Interpretation.—Nothing in this paragraph shall supersede, modify, change, or otherwise affect any requirement, procedure, or restriction applicable to a Bank employee, officer, or director under the Ethics in Government Act of 1978 that applies in addition to the requirements, procedures, and restrictions applicable to a Bank employee, officer, or director under this paragraph.”.

SEC. 96004. PARALLEL GAAP REPORTING.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by sections 96001 and 96002 of this Act, is amended by adding at the end the following:

“(n) PARALLEL GAAP REPORTING.—With any report issued by the Bank to the Congress or any committee of the Congress that contains accounting information that
is not prepared using generally accepted accounting principles, the Bank shall issue a 2nd report providing the same accounting information prepared using generally accepted accounting principles.”

SEC. 96005. MAKING THE BANK THE LENDER OF LAST RESORT FOR LOANS, ATTEMPTING PRIVATE FINANCING FIRST.

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

“(l) Applicants for Bank Assistance Required To Demonstrate Inability To Obtain Credit Elsewhere.—The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with a transaction, to a privately owned foreign applicant, other than a financial institution, unless the applicant demonstrates to the Bank that—

“(1) the applicant has sought, and has been unable to obtain, competitive financing for the transaction without any support from the Overseas Private Investment Corporation or the Small Business Administration; or

“(2) financing from a foreign export credit agency is available to the applicant to support comparable foreign goods and services competing with
the United States exports that would be financed by
the Bank through the application.”.

SEC. 96006. AUDIT COMMITTEE.

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

“(10) AUDIT COMMITTEE.—

“(A) MEMBERSHIP.—

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

“(ii) SPECIAL RULE.—If that there is only
1 director who is neither Chairman nor Vice
Chairman of the Board, the Chief Risk Officer
of the Bank shall be a temporary member of
the Audit Committee until a 2nd Bank director
who is neither Chairman nor Vice Chairman of
the Board is appointed to the Board.

“(B) DUTIES.—

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

“(ii) The Audit Committee shall—

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

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

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

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

“(C) REPORTS.—The Audit Committee shall re-
port to the Board regularly on its activities but may
act independently of the Chairman and Vice Chair-
man.

“(D) PROCEDURAL RULES.—

“(i) QUORUM.—2 members shall constitute
a quorum of the Audit Committee.
“(ii) ACTION ONLY BY MAJORITY VOTE.—

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

SEC. 96007. REPORT ON PRIVATIZING THE BANK.

Within 270 days after the date of the enactment of this Act, the President, in consultation with the Advisory Committee of the Bank, the Comptroller of the Currency, and the Governors of the Federal Reserve Board, shall submit to the Committees on Appropriations and Financial Services of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a report on the programs of the Bank that may be fully or partially privatized, which report shall—

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

(2) include an evaluation of whether the administration of the insurance and working-capital programs of the Bank could be partially or completely privatized; and
include an analysis of the current regulatory restrictions related to capital-allocation requirements for pre-export working capital and cross-border lending in amounts exceeding $25,000,000.

SEC. 96008. INDEPENDENT AUDIT OF BANK PORTFOLIO.

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

(b) Report.—Not later than 1 year after the appointment of the Chief Risk Officer of the Export-Import Bank of the United States, the Inspector General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report containing all findings and determinations made in carrying out subsection (a).
TITLE XCVII—IMPROVING THE ACCOUNTABILITY OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

SEC. 97001. EARNINGS RETENTION.

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

SEC. 97002. OFFICE OF THE PRESIDENT AND TERM LIMITS.

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

(1) in subsection (b), by inserting “who shall be chosen from among those individuals with at least
14

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

(2) in subsection (c)(8)(A)—

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

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

(C) by adding at the end the following:

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

SEC. 97003. REPAYMENT AS PRIORITY.

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

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

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

“(C) The Bank shall conduct all programs
of the Bank in a manner that, in the judgment
of the Board of Directors, offers reasonable as-
surance of repayment and minimizes risk of
loss. Loans made by the Bank shall be for specific purposes.”.

SEC. 97004. LIMITATIONS ON OUTSTANDING LOANS, GUARANTEES, AND INSURANCE.

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

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

SEC. 97005. CREDIT RISK.

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

TITLE XCVIII—JOB GROWTH

SEC. 98001. MEDIUM-SIZED ENTERPRISES.

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

“(F) FAIR CONSIDERATION FOR MEDIUM-SIZED ENTERPRISES.—In addition to the programs of the Bank to encourage the participation of small businesses in international commerce, the policies of the Bank shall give fair
consideration to making loans and providing guarantees for the export of goods and services by medium-sized enterprises.”.

SEC. 98002. INFLATION ADJUSTMENT.

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

“SEC. 12. INFLATION ADJUSTMENT.

“Beginning on the date on which the Bureau of Labor Statistics of the Department of Labor first publishes the Consumer Price Index after the date that is 1 year after the date of the enactment of this section, and annually thereafter, the Bank shall adjust all dollar amounts specified in this Act by the percentage change in the Consumer Price Index published on that date from the Consumer Price Index published the previous year.”.