

Ex-Im Bank: No Quorum, No Problem?

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The [Export-Import Bank \(Ex-Im Bank\)](#) is operating on a [limited basis](#) despite a renewal of its general statutory charter through FY2019 ([P.L. 114-94](#), Division E, enacted December 4, 2015). The absence of a Board of Directors quorum constrains Ex-Im Bank's ability to approve medium- and long-term export financing above \$10 million. The Board's status is of congressional interest because nominations to the Board are subject to Senate approval, and debate over it relates to broader issues for Congress over Ex-Im Bank (see CRS In Focus IF10017, [Export-Import Bank of the United States \(Ex-Im Bank\)](#), by Shayerah Ilias Akhtar).

Background

Ex-Im Bank's [Board of Directors](#) consists of five voting members—the President of the Bank (who also serves as Chairman of the Board), First Vice President (who also serves as Vice Chairman), and three additional directors—who are appointed by the President of the United States with the advice and consent of the Senate. (The Secretary of Commerce and U.S. Trade Representative are non-voting *ex officio* members.) No more than three voting directors can be of any one political party. The Board's responsibilities include approving financing for U.S. exports. A Board quorum is at least three directors ([12 U.S.C. §635a\(c\)\(6\)](#)), which Ex-Im Bank appears to interpret as three voting members.

Approval of Export Financing

Ex-Im Bank approves applications for export financing through a number of routes. According to Ex-Im Bank, the "Board authorizes the Bank's financing either directly or through delegated authority...." ([FY2015 annual report](#), p. 31). The charter also explicitly authorizes, for instance, Ex-Im Bank staff (12 U.S.C. §635a(g)(3)) and commercial banks (12 U.S.C. §635(b)(1)(E)(vii)(III)) to approve transactions related to small businesses.

According to Ex-Im Bank, "[w]ithout a quorum, the Board of Directors cannot conduct any business including considering applications for medium- and long-term transactions [exceeding \\$10 million](#)...." However, the lack of a quorum, in Ex-Im Bank's view, does not appear to impact its authority to approve transactions below \$10 million (and, in specific circumstances, certain transactions above \$10 million).

The Board had four voting members in [2014](#). On [July 20, 2015](#), amid a lapse in Ex-Im Bank's general statutory charter (July 1-December 3, 2015), two voting members' terms expired, leaving the Board with two voting members (Chairman and Vice Chairman) and below the three-member quorum threshold. On January 11, 2016, President Obama withdrew his nomination of [Patricia M. Loui-Schmicker](#) to another term on the Board; the nomination had been pending since March 16, 2015. Also that same day, the President nominated [John Mark McWatters](#) to be a Board member, but [no further action](#) has occurred in the Senate to consider the nomination.

The standoff regarding the nomination relates to ongoing debate over Ex-Im Bank. Supporters contend that Ex-Im Bank supports U.S. exports and jobs by filling gaps in private sector financing and helping U.S. exporters compete against foreign companies backed by foreign export credit agencies (ECAs), and contributes financially to the U.S. Treasury. Critics argue that Ex-Im Bank crowds out private sector activity, picks winners and losers, acts as "corporate welfare," and poses a risk to taxpayers.

In the 114th Congress, both the pending House and Senate State-Foreign Operations FY2017 appropriations bills would ease Ex-Im Bank's quorum requirement—allowing that, if a period occurs during which the Board's membership drops to below three voting directors during October 1, 2016 through September 30, 2019, the *entire* membership of the Board would constitute a quorum for that period. In the House, an [amendment \(Dent\)](#) on the quorum provision was approved on July 12, 2016 by a [voice vote](#) and added to the House version of the appropriations bill ([H.R. 5912](#), Sec. 7080), which was reported on July 15, 2016. The Senate version with the quorum provision ([S. 3117](#), Sec. 7034 (k) (15)) was reported on June 29, 2016. The provision would renew a prior temporary exception (July 21-December 2, 1999) to the quorum requirement enacted in law when vacancies on the Board reduced membership to two voting members in 1999 ([P.L. 106-46](#), §1(b)). Some [Ex-Im Bank supporters](#) favor such alternative approaches given the impasse over Board nominations, while [critics](#) disapprove of efforts to restore Ex-Im Bank's operations. Prospects for further action on these proposals are unclear.

Impact of Board Vacancies

As of June 30, 2016, Ex-Im Bank reportedly had [over 30 deals of more than \\$20 billion in the pipeline](#) awaiting Board approval pending a quorum. The [breakdown](#) of transactions in prior years further illustrates the role of a quorum in Ex-Im Bank activity. In each of FY2014 and FY2015, by *dollar amount*, two-thirds of all authorizations were Board-approved and one-third approved at non-Board levels. However, by total *number* of transactions, 2% were Board-approved and 98% were approved at non-Board levels. This divergence by amount and number is presumably due to the composition of Ex-Im Bank's authorizations, which generally include a smaller number of high-value deals (often above \$10 million) involving larger exporters or large-scale infrastructure projects, and a larger number of lower-value deals (less than \$10 million) involving small business exporters.

Ex-Im Bank supporters claim that the lack of a quorum is costing [\\$50 million in export losses daily](#), as well as thousands of U.S. jobs—for both direct Ex-Im Bank users and companies in their supply chains. [Some stakeholders](#) argue that uncertainty surrounding the Board's status, coupled with the prior reauthorization lapse and sustained foreign ECA competition, weakens Ex-Im Bank's international competitiveness. For instance, [General Electric, a major Ex-Im Bank user, announced](#) in June an agreement in which France's ECA will provide export financing for gas turbine combined cycle projects for countries such as Saudi Arabia, Mexico, and Brazil; GE, consequently, will invest €35 million to develop heavy duty gas turbine manufacturing capabilities in France. In contrast, critics contend that if the Bank cannot be fully terminated, a constraint on its ability to support large-scale deals is a "[second-best](#)" option. They also assert that large U.S. exporters' concerns about the Board vacancies validate their opposition to Ex-Im Bank as "[corporate welfare](#)." It is an open question whether, when, and how Ex-Im Bank may become fully operational again.