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Legislative Bulletin……………………………...Wednesday, May 9, 2012

Contents:

H.R. 2072 – Securing American Jobs Through Exports Act of 2011 (Miller, R-CA)

<u>Order of Business:</u> H.R. 2072 is scheduled to be considered on Wednesday, May 9, 2012, under a motion to suspend the rules and pass the bill. Despite the high-dollar authorizations in this legislation, no Member will be allowed to offer an amendment to the legislation.

<u>Summary:</u> H.R. 2072 reauthorizes the Export-Import (Ex-Im) Bank until September 30, 2014. The legislation directs the Secretary of the Treasury to initiate and pursue multilateral negotiations to reduce and ultimately eliminate government export subsidies for aircraft and eventually for all other items. Lastly the legislation raises the exposure limits and ties increases in exposure limits to the Bank maintaining default rates below 2%. Highlights of the bill are provided below.

Increase to Exposure Limits Tied to the Bank Default Rate

H.R. 2072 requires Ex-Im to monitor and report not less than quarterly on their overall default rate and their default rates by product, market, and industry sector. If the overall default rate equals or exceeds 2% the Bank must implement a corrective plan and provide monthly updates to Congress, if the situation is not corrected within six months, a third party is brought in to audit the Bank. The legislation increases the exposure limit through three phases:

- $120 billion in FY 2012
- $130 billion in FY 2013
- $140 billion in FY 2014

The legislation requires for FY 2013 and FY2014 increases in exposure limits to be tied to the Bank maintaining default rates below 2%. The legislation also requires the Bank to submit a multi-year business plan that identifies, among other items, potential for increased risk from its operations in FY2013. The business plan will then be reviewed and audited by GAO. The legislation requires that Ex-Im submit a report in response to the GAO review of its risk management practices and for the Secretary of the Treasury to submit reports on the status of negotiations with other countries to reduce/eliminate export subsidies for FY2014.

Study by the Comptroller General on the Role of the Bank in the World Economy and the Bank's Risk Management

The legislation requires that, within 10 months after the date of the enactment of this Act, the Comptroller General of the United States complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report which evaluates:

- The history of the rate of growth of the Bank, and its causes, with specific consideration given to:
    - the capital market conditions for export financing;
    - increased competition from foreign export credit agencies;
    - the rate of growth of the Bank from 2008 to the present;
- The effectiveness of the Bank's risk management, including:
    - potential for losses from each of the products offered by the Bank; and
    - the overall risk of the Bank's portfolio, taking into account:
        - market risk;
        - credit risk;
        - political risk;
        - industry-concentration risk;
        - geographic-concentration risk;
        - obligor-concentration risk; and
        - foreign-currency risk;
- The Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described above;
- The fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described above, and how the fees are affected by United States participation in international agreements; and
- Whether the Bank's loan loss reserves policy is sufficient to cover the risks described above; and makes appropriate recommendations with respect to the matters so evaluated.

The legislation requires that not later than 120 days after the Bank receives the report, the Bank shall submit to the Congress a report on the implementation of recommendations included in the report so received. If the Bank does not adopt the recommendations, the Bank shall include in its report an explanation of why the Bank has not done so.

Improvement and Clarification of Due Diligence Standards for Lender Partners and Non-subordination Requirement

The legislation requires Ex-Im to set due diligence standards for its lender partners and participants, which should be applied across all programs consistently. To minimize or prevent fraudulent activity, the Ex-Im Bank should require all delegated lenders to implement "Know your customer practices." The legislation also prohibits the Bank from entering into agreements where the Bank is subordinate to other creditors.

Notice and comment for Bank transactions exceeding $100,000,000

H.R. 2072 requires that Ex-Im Bank make available for public comment any transaction over $100 million, that such public comments be provided to the Board of the Bank, and that parties who submitted comments receive, upon their request, a summary of the facts and conclusions reached by the Bank. The notice and comment requirements are designed to ensure that the U.S. companies involved will not be put at a competitive disadvantage.

Categorization of Purpose of Loans and Long-term Guarantees in annual Report

The legislation requires Ex-Im to report in the annual report categorization of the purpose of loans and their long-term guarantee. The legislation requires the Bank to categorize each loan and long-term guarantee made by the Bank in the fiscal year covered by the report, and according to the following purposes:

- To assume commercial or political risk that exporter or private financial institutions are unwilling or unable to undertake.
- To overcome maturity or other limitations in private sector export financing.
- To meet competition from a foreign, officially sponsored, export credit competition.
- Not identified and the reason why the purpose is not identified.

Negotiations to End Export Credit Financing

The legislation directs the Secretary of the Treasury to initiate and pursue multilateral negotiations:

- With other major exporting countries, including members of the Organization for Economic Co-operation and Development (OECD) and non- OECD members, to **substantially reduce, with the ultimate goal of eliminating, subsidized export financing programs and other forms of export subsidies**; and

- With all countries that finance air carrier aircraft with funds from a state-sponsored entity, to substantially reduce, with the ultimate goal of eliminating, aircraft export credit financing for all aircraft covered by the 2007 Sector Understanding on Export Credits for Civil Aircraft (in this section referred to as the ''ASU''), including any modification thereof, and all of the following types of aircraft:

    - Heavy aircraft that are capable of a takeoff weight of 300,000 pounds or more, whether or not operating at such a weight during a particular phase of flight.
    - Large aircraft that are capable of a takeoff weight of more than 41,000 pounds, and have a maximum certificated takeoff weight of not more than 300,000 pounds.
    - Small aircraft that have a maximum certificated takeoff weight of 41,000 pounds or less.

The legislation requires that not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives:

- A report on the progress of any negotiations described in subsection (a)(1), until the Secretary certifies in writing to the committees that all countries that support subsidized export financing programs have agreed to end the support; and

- A report on the progress of any negotiations described in this Act, including the progress of any negotiations with respect to each classification of aircraft set forth in Act, until the Secretary certifies in writing to the committees that all countries that support subsidized export financing programs have agreed to end the support of aircraft covered by the ASU.

Review and Report on Domestic Content Policy

The legislation requires Ex-Im bank to conduct a review and report to Congress on its effectiveness in maintaining and creating jobs in the United States and contributing to the export of goods and services. The bill requires Ex-Im to consider whether:

- The domestic content policy accurately captures the costs of U.S. production, the ability of the bank to provide competitive financing;
- The impact of the financing on increased employment;
- The effects on the U.S. manufacturing and service workforce; and

- The effect of changes in the domestic content requirements to increasing jobs in the United States

The legislation requires the GAO to conduct a study of the bank's process for calculating the effects of its financing on job creation and maintenance and make recommendation for improvements.

Other Provisions

- The legislation requires all companies that do business with Ex-Im to certify that they do not do business with Iran, further isolating Iran from the international business community.

- The legislation adds members of the textile industry to the 17 members who are appointed to the bank's advisory committee. In addition, the advisory committee is tasked with considering how the bank may finance transactions for the textile industry to increase the export of textile components made in the United States and support the maintenance of U.S. jobs in the textile industry.

- The legislation authorizes the bank to use up to $20 million of its surplus, subject to appropriations, to update its information technology systems.

- The legislation requires within 2 years after the date of the enactment of this Act, and periodically (but not less frequently than every 4 years) thereafter, the Comptroller General of the United States shall conduct an audit of the loan and guarantee transactions of the Export-Import Bank of the United States to determine the compliance of the Bank with the underwriting guidelines, lending policies, due diligence procedures, and content guidelines of the Bank.

Conservative Concerns: Many conservatives have argued that the federal government has no authority to *participate* in commerce (as opposed to just regulating it), noting particularly that an entity that gives taxpayer dollars to foreigners to buy certain favored products from certain favored American companies is antithetical to a society based largely on free enterprise. Furthermore, some conservatives argue that during a time of government over-spending; it is not appropriate to leverage taxpayer dollars in order to pick economic winners and losers. The legislations increases its exposure limits by 40%, and many conservatives view the Ex-Im Bank simply as government subsidies to certain companies.

Some conservatives may also be concerned that, as the independent Congressional Research Service has noted, economists generally believe that government subsidized export financing merely shifts jobs from one sector to another without increasing the end number of jobs.

Many conservatives believe that Ex-Im's activities distort the market and discourage innovative solutions in the free market.

- Ex-Im's practice of providing loan guarantees to less-than-creditworthy foreign purchasers has enabled foreign companies to compete with U.S. companies in ways they otherwise would not have been able to.

- Ex-Im Bank does not just provide financing where it otherwise would not be available, but also sometimes provides financing to companies that would not have trouble obtaining credit.

Additionally, some conservative are concerned about taxpayer protection. With our national debt more than $15 trillion and rising, it's more critical than ever that Congress make a thorough assessment of the potential costs of any legislation expanding the government's existing obligations. The federal government has not done a great job at pricing risk. Ex-Im supporters have claimed that Ex-Im Bank is risk free, but this accounting analysis doesn't account for market risk.

- As the Congressional Budget Office (CBO) recently stated, current cost estimates "do not provide a full accounting of what federal credit programs actually cost the government because they do not incorporate the full cost of the risk associated with the loans."

- Excluding market risk significantly understates the actual costs of federal credit programs, and the accounting myth of government loan guarantees as riskless investments has been exploded by the disastrous results seen with Fannie Mae, Freddie Mac, Flood Insurance Program, and Solyndra.

- Fair-value analysis, which CBO noted is a more comprehensive measure of cost due to its incorporation of market risk, has been put forward for consideration in sources ranging from the House FY2012 Republican Budget to President Obama's 2010 Fiscal Commission, which included such analysis in its recommendation that budget scoring practices "should aim to more accurately reflect the true cost of government liabilities."

Lastly, conservatives have noted particular concerns about the Ex-Im Bank being financially intertwined with the likes of Enron, Solyndra, and even Mexican drug cartels. As the Wall Street Journal noted this week, the Ex-Im Bank is therefore an ideal place to cut government.

Supporters of the Bank mainly cite materialist arguments—that the Bank creates jobs and makes money for the government. However, these are Keynesian arguments that ignore the Constitution and principles of free enterprise. For example, a federal casino on the National Mall would also create jobs and make money for the government, but it would obviously be an inappropriate role for the federal government. Ex-Im is similarly inappropriate for America.

Supporters also assert that, because other countries around the world subsidize some of *their* exports, America must do the same. This line of reasoning rejects American exceptionalism and the notion that America should be an inspiring beacon of liberty for the world, practicing what it preaches, not merely a copycat of the world's anti-free-enterprise, anti-market policies.

Additional Background: The mission of the Export-Import Bank ("Ex-Im"), an independent federal agency, is to support export financing of U.S. goods and services. The Bank's main products are direct loans, loan guarantees, working capital guarantees, and export credit insurance. By law, the Bank is intended only to fill gaps in commercially available financing for U.S. exports by serving as a "lender of last resort," and not competing with private lenders. Ex-Im is also required by law to work toward securing international agreements to reduce government-subsidized export financing, thereby promoting a level playing field for U.S. exporters.

According to CRS, "The Ex-Im Bank's most recent stand-alone reauthorization (P.L. 109-438) was in 2006, when Congress extended the Bank's authority through September 30, 2011. Since then, Congress has extended the Ex-Im Bank's authority through appropriations vehicles. The FY2012 Consolidated Appropriations Act (P.L. 112-74) extended the Ex-Im Bank's authority through May 31, 2012."

Groups Opposing the Legislation:

American Civil Rights Union
American Conservative Union
Americans for Tax Reform
American Values
Center for Military Readiness
Chris Littleton, Co-Founder, Ohio Liberty Council
Citizens for the Republic
Club for Growth
Constitutional Coalition
Council for Citizens Against Government Waste
Edwin Meese III, former Attorney General
Erick Erickson, Editor, RedState.com
Family Research Council
Freedom Action
Heritage Action for America
James Miller III, former Reagan Budget Director
J. Kenneth Blackwell, Chairman, Coalition for a Conservative Majority
Less Government
Let Freedom Ring
Liberty Council Action
Media Research Center
Morton Blackwell, Chairman, The Weyrich Lunch
National Taxpayers Union
President, Americans for Limited Government
President, Citizens United
Public Service Research Foundation

Richard Viguerie, Chairman, ConservativeHQ.com
Taxpayers Protection Alliance
The Paul Revere Project
T. Kenneth Cribb, former Domestic Advisor to President Reagan
Tom Winter, Editor-in-Chief Emeritus, Human Events
Tradition, Family, Property
60 Plus Association

Groups Scoring Opposing the Legislation:
American Conservative Union
Americans for Prosperity
Americans for Tax Reform
Citizens Against Government Waste
Club for Growth
FreedomWorks
Heritage Action for America
National Taxpayers Union

Groups Supporting the Legislation:
Complete List of Companies

Groups Scoring in Support of the Legislation:
National Association of Manufacturers
U.S. Chamber of Commerce

Committee Action: H.R. 2072 was introduced on June 1, 2011 by Rep. Gary Miller and it was referred to the House Committee on Financial Services. On September 9, 2011 it was placed on the House Calendar.

Administration Position: Though no Statement of Administration Policy is provided, but the President Obama has publicly supported the Banks Reauthorization

Cost to Taxpayers: No CBO estimate available, but the legislation increases its exposure limit to $120 billion in FY2012, $130 billion in FY2013, and $140 billion in FY 2014.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the legislation increases the exposure limit by 40% in FY 2014. The legislation also adds members of the textile industry to the 17 members who are appointed to the bank's advisory committee. In addition, the advisory committee is tasked with considering how the bank may finance transactions for the textile industry to increase the export of textile components made in the United States and support the maintenance of U.S. jobs in the textile industry.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee Report, "H.R. 2072 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI." Though the legislation does not contain any technical earmarks, Ex-Im in the past has benefitted mainly just a small handful of big companies.

Constitutional Authority: The accompanying Constitutional Authority Statement reads: "H.R. 2097. Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 (relating to the general welfare of the United States); and Article I, Section 8, Clause 3 (relating to the power to regulate interstate commerce)." **Some conservatives may be concerned the U.S. Constitution grants Congress the power to regulate commerce, but Ex-Im is a clear example of the federal government *participating* in commerce.**

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