



To: Interested Parties
From: Heritage Action for America
Date: May 18, 2015
Subject: Path to Ex-Im Reauthorization Rapidly Closing

Because the House appears poised to allow the Export-Import Bank to expire¹ on June 30th without taking any action, proponents of reauthorizing the bank are staking their hopes on the Senate jamming the House. That path seems to be increasingly difficult to walk. While it is conventional wisdom to believe the Senate can “jam the House” the reality is that doing so is extremely difficult. There are two general scenarios in which Senate action could spur House action, but those situations are unlikely to materialize into significant threats.

Standalone reauthorization

Although Senate Majority Leader Mitch McConnell would prefer to see the bank expire, he suggested he would not prevent senators from voting on a reauthorization. Assuming a standalone reauthorization could clear procedural hurdles and pass the Senate, a standalone bill would not jam the House in any meaningful way.

- The House Rules Committee could either refuse to bring the bill to the floor or simply refer it to the committee of jurisdiction, which would be Financial Services. Both approaches would be consistent with House Speaker John Boehner’s “support [for] any plan that the chairman [of Financial Services] can get through his committee.”
- A discharge petition could theoretically be used to dislodge the Senate-passed bill from the committee, but the maneuver has only succeeded twice in recent history: a gun bill in the 1986 and McCain-Feingold in 2002.²

For a Senate-passed standalone reauthorization to make it to the House floor, Boehner would have to go back on his word, intentionally circumventing the Financial Services Committee and going against the House Majority Leader, House Majority Whip and eight House chairmen.³

¹ No additional legislation is necessary for the Export-Import Bank to begin winding down its operations. That authority is found in existing law (12 USC 635f: Termination date of Bank’s functions; exceptions; liquidation). The bank will not be able to enter into new financial contracts but it will be able to administer existing ones.

² <http://www.washingtonpost.com/blogs/the-fix/wp/2013/06/29/the-discharge-petitions-role-in-immigration-reform-explained>

³ Majority Leader Kevin McCarthy (R-CA), Majority Whip Steve Scalise (R-LA), Agriculture Chairman K. Conaway (R-TX), Budget Chairman Tom Price (R-GA), Energy & Commerce Chairman Fred Upton (R-MI), Financial Services Chairman Jeb Hensarling (R-TX), Foreign Affairs Chairman Ed Royce (R-CA), Oversight & Government Reform Chairman Jason Chaffetz (R-UT), Small Business Chairman Steven Chabot (R-OH), and Ways & Means Chairman Paul Ryan (R-WI) publicly oppose any extension of the bank.

Attach to “must pass” legislation

The more likely scenario is that proponents would attempt to attach reauthorization language to a “must pass” piece of legislation, much like it was last fall. There are two primary ways reauthorizing language could be attached to “must pass” legislation in the Senate, but both hinge on active participation from and consent by McConnell.

Base text. Reauthorizing language could be included in the base text of the “must pass” bill, either by the relevant committee or by the senators designated by leadership to draft the bill. Considering McConnell’s opposition to Ex-Im and the growing consensus against it among the Republican Party’s top tier presidential candidates, it is very unlikely senators would act without his blessing.

Amendment. The more likely scenario is that reauthorizing language would be offered as an amendment to a “must pass” bill during floor debate. The Senate amendment process is convoluted and, as we have seen over the past several years, is tightly controlled by the majority leader.

- **Blocking unanimous consent.** Amendments frequently receive votes as part of a unanimous consent (UC) agreement. Such an agreement would not be negotiated without McConnell; and even if such an agreement were negotiated any one of the bank’s many opponents in the Senate could object.
- **Filibustering the Ex-Im amendment.** Absent a UC agreement, senators have several options on the Senate’s amendment tree to get their amendments pending. Even if an amendment is pending, it is not guaranteed to receive a vote.⁴ McConnell could block a vote on the pending amendment by refusing to file cloture on that amendment. Since the amendment would not be germane to the underlying bill, it would fall (go away and no longer be pending) after cloture is invoked on the bill.

There is little reason to believe the Senate will jam the House on a reauthorization or extension of the Export-Import Bank. As Senate Majority Whip John Cornyn explained earlier this month regarding amendments and ending debate, “The only person who makes the decision is the leader.”⁵

In 44 days, the Export-Import Bank will begin winding down its operations. This presents a historic opportunity for congressional conservatives to not only end one of FDR’s creations, but to demonstrate to voters that America’s conservative party is fighting favoritism and cronyism in Washington. As Paul Ryan said, “This is our opportunity to advance our welfare-reform agenda, which starts by getting rid of corporate welfare.”⁶

⁴ During the Senate debate on the Iran Nuclear Agreement Review Act of 2015 (H.R. 1191), Sen. Tom Cotton (R-AR) used what was dubbed a “rare procedural move” to make one of his amendments pending. Nonetheless, the amendment did not receive a vote.

⁵ <http://www.politico.com/story/2015/05/mcconnell-holds-out-hope-for-improbable-deal-on-iran-amendments-117623.html>

⁶ <http://thehill.com/policy/finance/204431-ex-im-foes-counting-on-ryan>