



Comptroller General
of the United States

1157273

Washington, D.C. 20548

Decision

Matter of: Export-Import Bank--Funding Reserved For
Small Business Concerns

File: B-254396

Date: September 29, 1993

DIGEST

The Export-Import Bank (Bank) should calculate the amount authorized for the small business set-aside mandated by 12 U.S.C. § 635(b)(1)(E)(v) by using its subsidy appropriation as the basis for its projection, plus such other reasonable factors that reflect aggregate Bank program activity. Since the set-aside is available exclusively for small business, the Bank may not use unspent amounts in the set-aside for other purposes.

DECISION

The General Counsel of the Export-Import Bank (Bank) asked for our opinion on the Bank's method of calculating the 10 percent authorized program activity level that it must reserve for small business pursuant to 12 U.S.C. § 635(b)(1)(E)(v). The question arose because of recent changes in how Congress provides for the Bank's financing precipitated by the Federal Credit Reform Act of 1990. The General Counsel also asked whether unspent amounts in the reserve can be used for other purposes. For the reasons indicated below, we conclude that the Bank should calculate its authorized activity level, 10 percent of which is reserved for small business, by using its subsidy appropriation as the starting point for its projection and that unspent amounts in this set-aside cannot be used for other purposes.

Calculation of Amount Reserved

The Export-Import Bank Act Amendments of 1983 added section 2(b)(1)(E)(v) to the Export-Import Bank Act of 1945 (the Act), 12 U.S.C. § 635(b)(1)(E)(v) (Supp. IV 1992), which requires the Bank to "make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports directly by small business concerns . . . which shall not be less than 10 percent of such authority for each fiscal year." Pub. L. No. 98-181, § 618, 97 Stat. 1254, 1258-1259 (1983). Historically, Congress has specified in annual appropriations acts the

total principal amount of loans and guarantees that the Bank may provide. The Bank then makes available for financing small business exports an amount equal to 10 percent of this amount, regardless of the actual budget authority utilized by the Bank by the end of the fiscal year.¹

Under the Federal Credit Reform Act of 1990, codified at 2 U.S.C. §§ 661 - 661f (Supp. IV 1992), new direct loan obligations may be incurred and new loan guarantee commitments may be made only to the extent that appropriations of budget authority to cover their costs are made in advance. 2 U.S.C. § 661c(b). This subsidy cost is defined in 2 U.S.C. § 661a(5) as the estimated long-term cost to the Government of direct loans or loan guarantees, calculated on a net present value basis.

For fiscal year 1993, in addition to establishing a subsidy appropriation of \$757 million, Congress imposed a limitation of \$15.5 billion on "gross obligations for the principal amount of direct loans, and tied-aid grants, and total loan principal, any part of which is to be guaranteed, including insurance" that the Bank could authorize during the fiscal year. 1993 Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 102-391, 106 Stat. 1633, 1655 - 1656 (1992). Accordingly, for fiscal year 1993, the Bank interpreted 12 U.S.C. § 635(b)(1)(E)(v) as requiring it to make available \$1.55 billion for loans, guarantees, and insurance for small business.

However, the submission indicates that Congress will apparently not specify any limitation on the total principal amount of loans, guarantees and insurance that the Bank may provide for fiscal year 1994. See H.R. 2295, as introduced in the House, May 27, 1993, and as received in the Senate, June 22, 1993. In submitting its report on the 1994 Foreign Operations, Export Financing, and Related Programs Appropriations Bill, the House Committee on Appropriations indicated that "[t]he Committee removed the program limitation on the Bank and has granted the Bank the flexibility to determine, in response to demand, the appropriate mix of direct loans, guaranteed loans, tied-aid grants, and mixed credits and insurance." H.R. Rep. No. 125, 103d Cong. 1st Sess. 102 (1993).

¹See April 3, 1992 letter from Hart Fessenden, General Counsel, Export-Import Bank, to Rachel DeMarcus, Assistant General Counsel, GAO, reprinted in GAO, The U.S. Export-Import Bank: The Bank Provides Direct and Indirect Assistance to Small Businesses (GAO/GGD-92-115, B-247638, Aug. 21, 1992) at 14-16.

Assuming that the limitation is not enacted for fiscal year 1994, the Bank must develop some other methodology to calculate its available aggregate loan, guarantee, and insurance authority in order to effectuate the 10 percent small business reservation of 12 U.S.C. § 635(b)(1)(E)(v), which had previously been calculated based on the limitation. The Bank proposes to estimate, at the outset of each fiscal year, total projected authorizations for that year based upon the amount of subsidy appropriated to the Bank for that year, as well as projected demand and past experience. The Bank would then make available 10 percent of that amount for small business exports. To ensure that the amount available for small business approximates as closely as possible 10 percent of actual authorizations, the Bank would make adjustments to the amount made available to small business on a quarterly basis taking into account actual authorizations during the previous quarter as well as revised projections for the balance of the fiscal year.

We agree with the General Counsel that Congress has not changed its support for small business that section 2(b)(1)(E)(v) reflects, and that the Congress still intends to target a specified percentage of the Bank's financing resources at small business. See Export Enhancement Act of 1992, Pub. L. No. 102-429, § 121, 106 Stat. 2198 (1992). We also recognize that in the absence of a Congressionally set dollar limitation on the Bank's aggregate loan, guarantee and insurance authority, the Bank's authorized program activity level is no longer precisely determinable.

Although it is only an extrapolation from cost, the Bank's proposal to estimate the total projected authorizations for the year based upon the amount of subsidy appropriated appears to represent a reasonable starting point. As the General Counsel points out, projections based on the estimated cost of loan, guarantee and insurance commitments under credit reform do not directly yield a figure for the Bank's available aggregate loan, guarantee and insurance authority. Furthermore, we have no objection to the Bank, in addition to estimating total authorizations for the ensuing fiscal year starting with the amount of subsidy appropriated, using such other reasonable factors² as are consistent with the Bank's statutory objectives and authority.

²For example, because some programs may not involve a cost to the government, the Bank may consider what other factors to include in projecting the authorized level for purposes of calculating the set-aside.

Unutilized Small Business Authority

The General Counsel asks whether the Bank may use any portion of the authorizations intended for small business exports for other purposes, if the Bank concludes near the end of the fiscal year that small business is unlikely to utilize the full 10 percent set aside. Despite various marketing efforts targeted at small business, the Bank cannot directly control the demand for its programs or control the volume of small business activity it may be asked to support. Thus, if the Bank determines that small business is not likely to make full use of the 10 percent set aside, the General Counsel asserts that what remains should be available for use to meet demand from other users to avoid "closing out [the Bank's] books at the end of the fiscal year with uncommitted funds that were not utilized by small business."

In our opinion, Congressional intent is clear that not less than 10 percent of the Bank's loan and guarantee limits are reserved for small business. As noted earlier, section 2(b)(1)(E)(v) provides that the Bank "shall make available" 10 percent of its aggregate loan, guarantee, and insurance authority to finance direct small business exports. Clauses (vi) and (vii) of section 2(b)(1)(E) both refer to the "amount set aside pursuant to clause (v)." We agree with the Bank's characterization of the quoted language of clauses (vi) and (vii) as "a short hand reference" to the more detailed provisions of clause (v), but, unlike the Bank, we view the references as definitional, that cannot be read out of the statute. "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute," 2A Sutherland, Statutory Construction § 46.06 (1991).

Any doubt concerning Congress' intent in this regard is dispelled by the legislative history of the 1983 amendment adding the 10 percent set-aside for small business to the Act.³ The Bank attempts to characterize the language of 12 U.S.C. § 635(b)(1)(E)(v) as being more in the nature of a preference, not a set-aside, for small business. However, the legislative history of the 1983 amendment to the Export-Import Bank Act unambiguously speaks in terms of set-asides. The House Banking Committee Report stated that:

³This was again indicated by Congress when it amended section 2(b)(1)(E)(v) of the Act in section 121 of the Export Enhancement Act of 1992, Pub. L. No. 102-429, 106 Stat. 2198. See also H. Conf. Rep. No. 1010, 102d Cong. 2d Sess. 33-34 (1992).

15777

"This bill . . . , establishes budget set-asides exclusively for small business concerns The bill also requires the Export-Import Bank to submit to the Congress . . . a report outlining a proposed program on the part of Exim designed to ensure utilization of the full set-aside for small business exports." H.R. Rep. No. 175, 98th Cong. 1st Sess. 19 (1983) (emphasis added).

Furthermore, the amendment "reserves certain percentages of those loan limits, and of those guarantee limits, to small business concerns." Id. at 72 (emphasis added). Senator Boschwitz, the sponsor of the set-aside amendment, commented that an important aspect of the amendment is that in the event the Bank does not hit the small business "mandates" the money cannot then be lent to larger businesses. Hearing on Export-Import Bank Financing for Small Business, before a subcommittee of the Senate Committee on Small Business, 98th Cong., 1st Sess. 3 (1983). We note that in 1983, a proposal in Congress to use unspent set-aside funds for other purposes was not adopted.⁴

Thus, the legislative history of the small business reserve in 12 U.S.C. § 635(b)(1)(E)(v) clearly indicates that the funds are a set-aside exclusively for the use of financing exports directly by small business, and are not for any other purpose. Furthermore, allowing the use of unspent set-aside funds for the Bank's other programmatic needs would weaken the purpose of the set-aside and provide a disincentive for commitment of funds to small business.

⁴In offering an amendment containing the set-aside provision to the Export-Import Bank Act Amendments of 1983, Senator Boschwitz stated that:

"The major issue in these negotiations involved the possibility that small business would not be able to use all of the funds available from the set-aside. Opponents of the amendment suggested a trigger mechanism that would make any unused small business funds available to Exim's big business customers. While a trigger mechanism sounds good in concept, we could not agree on one that would not give Exim a loophole that it could use to avoid financing small business exports. Instead, I agree to reduce the percentages of the small business set-aside in return for not including a trigger mechanism. As a result, it should be abundantly clear to Exim that the funds must be used only to finance small business exports."

129 Cong. Rec. 25572, Sept. 23, 1983.

Accordingly, we conclude that section 2(b)(1)(E)(v) of the Export-Import Bank Act requires the Bank to reserve 10 percent of its aggregate loan, guarantee and insurance authority exclusively for direct assistance to small business. To the extent amounts in the Bank's small-business set-aside remain unspent at the close of each fiscal year, those funds lapse.

for William J. Austin
Comptroller General
of the United States