

Ancillary Service Fees Policy

Eligibility Determination Process

There are five criteria used for determining whether ancillary service fees are eligible for financing as part of the Ex-Im Bank supported export transaction to which the ancillary services relate. They are:

- (1) the ancillary service fees must be directly related to the structuring, evaluation, documentation and/or implementation of the financing for the Ex-Im Bank supported portion of the export transaction¹;
- (2) the ancillary services must meet Ex-Im Bank's U.S. content requirements or one of the following three exceptions to those requirements:
 - i. Ex-Im Bank affirmatively selected the ancillary service provider and required that the borrower or the other party pay for the services.
 - ii. The ancillary services giving rise to the fees are necessary in order for the underlying export transaction to go forward and such services cannot reasonably be obtained in the United States.
 - iii. The ancillary service fee is a bank funding fee. Note: If a bank funding fee includes separable bank advisory fees, the bank advisory fees must qualify separately under the U.S. content requirements or must meet the second exception (above) to those requirements.
- (3) the ancillary service fees must not fall within any of the excluded categories of fees (see Attachment 1);
- (4) the ancillary service fees must be reasonable² based on the nature of the ancillary service fees and the individual transaction requirements; and
- (5) the ancillary service fees must be "one-time" (ie, non-recurring) and incurred (i.e., the ancillary services have actually been performed) prior to the end of the disbursement period.

¹ If a particular ancillary service is provided jointly to Ex-Im Bank and other lenders/ECAs, Ex-Im Bank will finance (as part of the transaction for which the ancillary services were provided) only those ancillary service costs attributable to the Ex-Im Bank supported portion. An exception to this Proportionality Rule is that when a U.S. ancillary service provider is providing legal or engineering services in connection with a project which Ex-Im Bank is supporting, Ex-Im Bank will treat the ancillary services as if they related solely to the Ex-Im Bank supported portion. This exception is based on the rationale that these are the types of ancillary services Ex-Im Bank expects project parties to procure to ensure the proper structuring of the project financing; and it is not standard commercial practice to specifically allocate the costs of these ancillary services among the separate lending portions on the basis of their respective financing portions.

² The determination of "reasonableness" is made by the Ex-Im Bank engineer and loan officer, in consultation with the attorney, at the authorization/operative stage of the transaction on the Acquisition List.

The following categories of fees/cost are not eligible for financing under the Ancillary Service Fees policy:

1. Commitment fees for any financial institution including Ex-Im Bank.
2. L/C fees.
3. Project development fees charged by sponsors.
4. Swap breakage costs.
5. Ancillary services performed by the guarantor/buyer/borrower or their subsidiaries. This includes guarantee fees charged by banks or the buyer's government for bank or sovereign guarantees of the buyer's obligation.
6. Ancillary services performed by a subsidiary of the exporter/sponsor unless specifically proven by the exporter/sponsor that the services are being procured on an "arms length" basis. The burden of proving the "arms length" nature of the ancillary services rests with the ancillary service provider. This can be accomplished either through evidence provided by the sponsor or the determination of an independent consultant.
7. Fees imposed by any U.S. or foreign governmental entity or multinational organization with the exception of host country taxes eligible for support under Ex-m bank's local cost policy and Ex-Im Bank's exposure fees.