



## **EXPORT-IMPORT BANK OF THE UNITED STATES**

[Public Notice EIB-2016-0004]

### **Proposal to adopt the 2010 Small Business Jobs Act Interim Rule as an Alternative Size Standard for Defining a Small Business for Export- Import Bank Programs**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Export-Import Bank of the United States (“EXIM Bank”) proposes to adopt the Interim Rule (as defined below) set forth in Section 1116 of the Small Business Jobs Act of 2010 (Pub. L. No. 111-240) (the “Jobs Act”) as an alternative standard for defining a small business for all of its programs. The Jobs Act mandated that the U.S. Small Business Administration (“SBA”) use maximum tangible net worth and average net income as an alternative to the use of industry based size standards as follows: not more than \$15 million in tangible net worth and \$5 million in average net income after Federal income taxes to define a small business concern (“Interim Rule”). The SBA currently uses the Interim Rule for its business loans under Section 7(a) of the Small Business Act (“7(a) Loan Program”) and development company loans under Title V of the Small Business Investment Act of 1958 (“504 Loan Program”, and together with the 7(a) Loan Program, the “SBA Loan Programs”) to determine size eligibility for an applicant if such applicant does not meet the size standards that it has developed for individual industries as defined under the North American Industry Classification System (“NAICS”). If approved by the SBA’s Administrator, EXIM Bank will apply the Interim Rule as an alternative size standard in addition to using size standards established by SBA for individual industries to determine whether or not participants of EXIM programs can be categorized as small business concerns.

**DATES:** Comments must be received on or before **14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER** to be assured of consideration.

**ADDRESSES:** Comments may be submitted through the Federal rulemaking portal at [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV). To submit a comment, enter EIB-2016-0004 under the heading “enter keyword or ID” and select “Search.” Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB-2016-0004 on any attached document. Comments received will be made available to the public at [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV).

**PURPOSE AND USE:** EXIM Bank proposes to align its size standards for determining a small business with SBA’s current standards for the SBA Loan Programs by adopting the Interim Rule, set forth in the Jobs Act. The Interim Rule would be used as an alternative size standard, in addition to and not a replacement of, SBA’s industry based size standards currently used for defining a “small business concern” for EXIM Bank’s programs and reporting obligations. The Interim Rule provides that an applicant for a SBA Loan Program may be eligible for such a loan if (i) the tangible net worth of the applicant is not more than \$15,000,000; and (ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application is not more than \$5,000,000. If the request to adopt the Interim Rule as an alternative size standard is approved by the SBA’s Administrator for EXIM Bank programs, any applicant for any EXIM Bank product would be screened to determine whether or not it is a small business concern as follows: (i) first by using the industry-based size standards and (ii) then by applying the Interim Rule, if such applicant does not qualify as a small business concern under the industry based- size standards. It is EXIM Bank’s belief and understanding that the approval for EXIM Bank to adopt the Interim Rule would align its

small business size definitions with SBA's current practices and bring consistency to the marketplace, would possibly increase the number of applicants qualifying as a small business concern for EXIM Bank's programs and increase the accuracy of EXIM Bank's reporting to Congress on its small business activities.

### **Legal Framework and Statutory Background**

Section 2(b)(1)(E)(v) of the EXIM Bank Charter requires EXIM Bank to make available not less than 25% of its overall loan, guarantee and insurance authority to support the financing of exports by "small business concerns." The Charter further states that a "small business concern" is "as defined under Section 3 of the Small Business Act". In addition to criteria for determining a "small business concern" set forth therein, Section 3 of the Small Business Act grants the Administrator of the SBA the general authority to establish small business size standards for Federal government programs. Through this authority, SBA has promulgated industry-specific size standards which determine eligibility as a small business for more than 1000 industry categories as defined by the North American Industry Classification System (NAICS). Historically, EXIM Bank has relied on these industry-based size standards to be able to determine which participants in its programs can be considered a small business concern.

Under the Jobs Act, Congress amended the definition of "Small Business Concerns" in Section 3(a) of the Act by adding an "Alternative Size Standard" as an additional component of such definition. Under the new Section 3(a)(5) of the Small Business Act, Congress directed the SBA to establish an alternative size standard using maximum tangible net worth and average net income for applicants for the SBA Loan Programs. Further, the Jobs Act provided that until the SBA establishes a permanent tangible net worth and net income based alternative size standard,

the Interim Rule would enable applicants to be eligible for the SBA Loan Programs if the applicant's: (1) tangible net worth is not more than \$15 million, and (2) the average net income after federal income taxes for the two fiscal years prior to the date of application is not more than \$5 million. As of the publication of this notice, the SBA has not established a permanent alternative size standard definition and as a result, the SBA continues to apply the Interim Rule to define a small business concern for the SBA Loan Programs, in addition to using the industry based size standards. Based on EXIM Bank's Charter which emphasizes assistance to small business concerns and its mandate to adhere to SBA's definitions of small business, EXIM Bank proposes to adopt the Interim Rule as appropriate and necessary to accomplish those mandates, following approval by the SBA's Administrator.

**Business Rationale:**

An important rationale for aligning EXIM Bank's definition of small business with the SBA's definition as it applies to the SBA Loan Programs is that EXIM Bank programs are complementary and/or work in conjunction with the 7(a) Loan Programs. As a result, we believe that EXIM Bank and the SBA may often serve many of the same concerns. However, currently, small businesses that qualify for 7(a) Loan Programs under the Interim Rule but not under industry based size standards would not be considered small businesses for programs offered by EXIM Bank. Notwithstanding a small business's eligibility for the SBA Loan Programs under the Interim Rule, the same small business may potentially be subject to different size criteria for EXIM Bank's program's because EXIM Bank is currently unable to use the Interim Rule to determine whether a concern can be considered a small business for its programs. This inconsistency can cause confusion in the marketplace and cause the same entities to be treated differently by SBA and EXIM Bank even though such entities may be evaluated for similar

purposes. It also poses a difficulty for EXIM Bank in providing accurate reporting on the size of its participants to Congress because the same concern may be considered a small business under a SBA Loan Program but not under an EXIM Bank program. Accordingly, EXIM Bank proposes to align its small business size criteria with the Interim Rule so that small businesses that are eligible for SBA Loan Programs under the Interim Rule will also be considered small businesses for EXIM Bank purposes.

The 7(a) Loan Program represents the bulk of SBA's small business guaranteed loans. Furthermore, SBA's working capital and all of its international guaranteed loan programs fall under the umbrella of the 7(a) Loan Program. The SBA's international programs include the Export Express Loan Program, Export Working Capital Program and the International Trade Loan Program. In each case, SBA is authorized to guarantee loans to small businesses using its industry based size standards or using the Interim Rule for businesses that otherwise may not be eligible under the industry based size standards. Similarly, EXIM Bank programs also provide various financing and other support to small businesses through working capital programs, medium and long term guaranteed credit, direct loans, trade credit insurance and other financial support that facilitates the export of US made goods and services. Although EXIM Bank programs are available to businesses of all sizes, significant efforts are made to make these programs accessible to small businesses, and some EXIM Bank programs are available exclusively to small businesses, such as Express Insurance. The SBA may require trade credit insurance on its loan guarantee programs where the borrower is exporting on open account terms. These credit insurance requirements could be met by EXIM Bank through the Express Insurance program. As further incentive, EXIM Bank provides a 25% discount on insurance premiums for SBA borrowers who use any one of the many EXIM Bank insurance policy

options. Other EXIM Bank programs are likewise useful to current SBA borrowers. For example, if a borrower's working capital needs exceed \$5 million (the maximum loan amount under the 7(a) Loan Program), the EXIM Bank Business Credit Working Capital Guarantee Program ("WCGP") can be used to replace the borrower's SBA guaranteed working capital facilities. In fact, to facilitate such a transition, EXIM Bank and the SBA share a common application with respect to these working capital guarantee programs. If the borrower needs to sell on terms longer than the three year maturity authorized for the SBA's Export Working Capital Program, EXIM Bank has a range of medium and long term buyer options that can ensure the booking of a sale. Given the complementary nature and similarities of the 7(a) Loan Program and EXIM Bank financing products, EXIM Bank believes it is in the best interest of the public that the Interim Rule be adopted for EXIM Bank products so that the standards for a small business are consistent between these federal agencies.

### **Impact of Adopting the Interim Rule.**

EXIM Bank believes that the adoption of the Interim Rule for its programs would enable business concerns that do not qualify as small business concerns under the industry based size standards to qualify as small business concerns under the Interim Rule. EXIM Bank also believes that some business concerns that currently qualify as small business concerns for the SBA Loan Programs but not for EXIM Bank Programs will also qualify as small business concerns under the Interim Rule. EXIM Bank intends to collect data showing the amount of participants that qualify as a small business concern under the Interim Rule if the Interim Rule is approved for EXIM Bank programs.

**Request for Comments:** EXIM Bank seeks comments from the public with respect to its proposal to use the Interim Rule as an alternative size standard in addition to the industry based standards in determining what participants of EXIM Bank programs can be considered a small business. Commenters addressing this proposed rule should include data and/or other information they consider relevant in support of their comments.

**INFORMATION ON DECISION:** Information on the final decision for this proposal will be available in the Federal Register.

In accordance with SBA's small business size regulations, specifically 13 CFR 121.901-904, EXIM Bank must evaluate the comments and must submit them with its recommendation to the SBA's Administrator's approval. The public must be made aware that the proposed alternative size standard under the Interim Rule will not take effect until EXIM Bank publishes a final notice in the *Federal Register*, which will only occur after the SBA's Administrator has approved the adoption of the Interim Rule for EXIM Bank programs as an alternative size standard.

Joyce B. Stone  
Program Specialist  
Office of the General Counsel  
[Billing Code 6690-01-P]

[FR Doc. 2016-28083 Filed: 11/21/2016 8:45 am; Publication Date: 11/22/2016]