

June 21, 2019

## Memorandum

**To:** Members of the Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** June 26, 2019 Full Committee Markup

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The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 12:30 p.m. on Wednesday, June 26<sup>th</sup>, 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

**Amendment in the Nature of a Substitute to H.R. 1690, the “Safe Housing for Families Act of 2019” (García - IL)**

**Summary:** This amendment in the nature of a substitute would authorize \$300 million over three years to support a new requirement to install and maintain carbon monoxide detectors in every housing unit and in any location with a combustion-fueled appliance assisted under Section 202, Section 811, Public Housing, and Section 8 in federally assisted housing.

**Background:** Despite existing Uniform Physical Condition Standards (UPCS) and Real Estate Assessment Center (REAC) inspection requirements, Federal laws and regulations do not currently require the presence of carbon monoxide detectors in federally-assisted housing. Since 2003, there have been 13 deaths cited in public housing due to carbon monoxide poisoning with four occurring in 2019 alone.<sup>1</sup>

In April 2019, HUD began to require that inspectors collect data on carbon monoxide detectors in federally assisted and insured housing.<sup>2</sup> In May, the agency announced that it would provide \$5 million in grants to support the purchase and installation of carbon monoxide detectors in public housing.<sup>3</sup> Despite these recent efforts to make federally assisted housing safer from carbon monoxide, HUD has said that it would need Congress to pass legislation in order to act faster.<sup>4</sup>

The Amendment in the Nature of a Substitute to H.R. 1690 authorizes \$300 million over three years to support a new requirement to install and maintain carbon monoxide detectors on every level of all Federally assisted housing units under Section 202, Section 811, Public Housing, and Section 8 programs. The requirement would only become effective once sufficient funds have been appropriated by Congress to ensure that property owners and public housing authorities are not burdened with an unfunded mandate.

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<sup>1</sup> NBC News, “How many more people have to die? Carbon monoxide kills two more in HUD housing.” May 3, 2019.

<sup>2</sup> U.S. Department of Housing and Urban Development, “Carbon Monoxide Detection Systems 4.0 Software Documentation Requirements (inspector Notice No. 2019-01).” March 2019.

<sup>3</sup> U.S. Department of Housing and Urban Development, “HUD to offer \$5 million for carbon monoxide detectors in public housing.” May 2019.

<sup>4</sup> NBC News, “HUD agrees to provide \$5 million for carbon monoxide detectors in public housing after deaths.” May 2019.

In addition to revising the funding, the Amendment in the Nature of a Substitute also makes a number of minor changes to the text of H.R. 1690.

**Amendment in the Nature of a Substitute to H.R. 3407, the “United States Export Finance Agency Act of 2019” (Waters/McHenry)**

**I. Summary:** H.R. 3407, the “United States Export Finance Agency Act of 2019” would renew the operating charter the Export-Import Bank of the United States (EXIM, or, the Bank) for seven years, through September 30, 2026. The bill would increase the Bank’s statutory lending authority from \$135 billion to \$175 billion over a seven-year period. The bill would also change the name of the “Export-Import Bank of the United States” to the “United States Export Finance Agency.”

The bill would strengthen EXIM’s support for small businesses by increasing within three years the Bank’s small business mandate from 25% to 30% of the Bank’s total annual transactions, as well as by creating an “Office of Territorial Exporting” to increase Bank support for, and promote the export of goods and services from, Guam, Puerto Rico and other U.S. territories.

Additionally, the bill would create an Office of Minority and Women Inclusion and renew the Bank’s focus on the environment by creating an “Office of Financing for Renewable Energy, Energy Efficiency, and Energy Storage Exports” and by mandating a goal of directing 5% of the Bank’s annual lending authority to finance renewable energy, energy efficiency and energy storage technology exports.

In the absence of a Board quorum longer than 90 days, the bill would establish a temporary Board, consisting of Ex-Im’s Board members (if any), the Treasury Secretary, the Commerce Secretary, and the U.S. Trade Representative, which would have the authority only to consider, and approve on a unanimous basis, transactions over \$25 million. This provision would sunset in 7 years.

***Enhanced Disclosure Requirements.*** For any exporter or lender whose support from the Bank exceeds more than 20% of the Bank’s lending authority in a fiscal year, the bill would require the President of the Bank to report to Congress about the exporter’s or lender’s: 1) diversity in management, employment, and business activities; 2) outreach efforts to small businesses, including efforts to raise awareness of the Bank to its suppliers; and 3) the number of jobs created during the last fiscal year, and other items. The report would also include an economic impact analysis and an assessment of the need for financing. For any subsequent transaction by such exporter or lender over \$100 million in the same fiscal year, the Bank will be required to report to Congress on the economic impact analysis and the assessment of the need for financing the transaction.

***Restrictions on EXIM support for Chinese State-Owned Enterprises.*** If the board approves a transaction over \$25 million that relates to a Chinese state-owned entity, before the transaction can take effect, the bill would require the US Trade Representative, after consulting with the appropriate Federal agencies, to certify the transaction within 60 days. The transaction cannot be certified if the state-owned entity provides material or financial support to the following policies and operations of China: 1) military or intelligence; 2) “One Belt, One Road” initiative; 3) abuse of human rights, including freedom of speech. In addition, the Trade Representative must certify that the entity has not knowingly engaged in the theft of US Intellectual Property or that the entity has leadership that has violated U.S. corruption laws. The Trade Representative must also certify that the transaction would provide a meaningful benefit to the U.S., and that it does not involve an export subject to controls. Small business exports and humanitarian exports (including rescue equipment and medical devices) would be exempt from this provision. In addition, the President may waive any requirement of this provision for up to one year at a time if the President

determines it is essential to the national interest. Five years after enactment, the Board of Directors would have the authority to vote to terminate this certification requirement, and upon notification to Congress that it has done so, the provision would no longer have any force or effect.

***Makes permanent EXIM's risk transfer program authority.*** The bill requires EXIM to consider specific factors with regard to reinsurance pools; and requires EXIM to report to Congress every two years on the reinsurance program.

***Accountability and Monitoring.*** The bill includes a Sense of Congress that the Board should create an accountability mechanism to review, investigate, and offer independent dispute resolution to resolve allegations by affected parties that the Bank has not followed its own procedures and policies with regard to the environmental and social effects of its projects.

The bill would also strengthen fraud controls; expand the responsibilities of the Risk Management Committee; and require an independent audit by EXIM's Inspector General of the Regional Export Finance Centers.

***Program on China and Transformational Technology and Renewable Energy Exports.*** The bill would direct the Bank to establish a 7-year program with a goal of using at least 20% of its lending authority to:

- Support U.S. exports that compete directly with China's (and other non-OECD country) exporters by providing financing, to the extent practicable, that is fully competitive with the rates and terms offered by China's or other non-OECD country export credit agencies; and
- Support U.S. innovation, employment, and technological standards through direct exports of certain transformational technologies in areas such as artificial intelligence, biomedical science, wireless communication equipment (including 5G), quantum computing, semiconductor manufacturing, fintech, and renewable energy exports.

***Use of funds to update information technology (IT).*** The bill would extend EXIM's authority to use a percentage of its annual surplus for seven years to update its IT systems, with the aggregate amount used not to exceed \$28 million.

***International export credit negotiations.*** The bill would extend a requirement from the 2015 EXIM Bank reauthorization related to directing the United States to have "the goal of eliminating" export credit subsidies by 10 years; replace the "President" with the "Secretary of the Treasury" as lead negotiator; and, change a requirement from once annually to no less than twice per calendar year that Treasury submit a progress report to Congress on the status of the negotiations.

***Additionality Requirements.*** The bill would require the Bank to include written documentation of the determination and verification of additionality in its records. Additionality is the term used to mean that commercial financing was not available to the U.S. exporter on economically viable terms or that the existence of a competing foreign good or service backed by a foreign export credit agency. GAO would conduct subsequent audits of additionality procedures.

***Administratively Determined Pay.*** The bill would provide EXIM with limited pay flexibility for no more than 35 employees, in order to allow the agency to attract and retain top talent. This authority would not apply to politically-appointed employees.

***Prohibition on financing for certain aviation-related vehicles.*** The bill would prohibit the Board from approving a transaction involving an aviation-related vehicle during any period in which the Federal government has prohibited its operation.

***Prohibition on EXIM assistance to state sponsors of terrorism.*** The bill restates current law with respect to the prohibition on EXIM assistance to state sponsors of terrorism.

***Reports to Congress.*** The bill includes several additional reports to Congress including:

- a. Annual testimony upon request by Congress;
- b. Survey of Blockchain use by U.S. exporters;
- c. Current Bank policies, procedures, guidelines and bylaws;
- d. Travel Practices of Bank Employees;
- e. Steps taken to correct information security;
- f. Summary of authorizations made under the Program on China and Transformational Exports;
- g. Bank's efforts to increase support to export businesses in the U.S. Territories; and
- h. Bank's efforts to enhance outreach and increase support for renewable energy, energy efficiency, and energy storage exports.

The Amendment in the Nature of a Substitute to H.R. 3407 contains a number of minor and technical changes to the introduced bill.

## **II. Background**

The Export-Import Bank of the United States (EXIM Bank, or EXIM) was established by executive order in 1934 and in 1945, became an independent Federal agency. As the official export credit agency of the United States, the Bank's mission is to facilitate, through direct loans, loan guarantees, working capital finance, and export credit insurance, the export of U.S. goods and services in order to create and sustain jobs in the United States.

Over the last 10 years, EXIM financed more than \$255 billion in U.S. exports, supported more than 1.5 million American jobs, and remitted more than \$3.4 billion in deficit-reducing receipts to the Treasury.

By its charter, it is the policy of the United States that the EXIM Bank not compete with the private sector. Rather, the role of the agency is to fill in gaps when the private sector lacks the capacity or willingness to provide the financing required by U.S. exporters.<sup>5</sup>

The EXIM Bank is one of more than 100 export credit agencies around the world that each help their home-country exporters compete in the global markets. Therefore, the Bank also plays an important role in helping to level the international playing field by offsetting the financing offered by foreign export credit agencies. Without EXIM, U.S. businesses would be at a competitive disadvantage vis-à-vis their foreign competitors, who receive generous export credit financing support through their own governments.

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<sup>5</sup> "The Charter of the Export-Import Bank of the United States, as amended through P.L. 114-94, December 4, 2015." Updated February 29, 2016. See at [https://www.exim.gov/sites/default/files/2015\\_Charter\\_-\\_Final\\_As\\_Codified\\_-\\_02-29-2016.pdf](https://www.exim.gov/sites/default/files/2015_Charter_-_Final_As_Codified_-_02-29-2016.pdf)

To avoid a global race to the bottom on government-backed export credit financing, in 1978, the United States and other advanced economies that offer official export credit formed an “Arrangement on Officially Supported Export Credits” through the Organization for Economic Cooperation and Development (OECD). The Arrangement generally establishes limitations on the terms and conditions for government-backed export financing, including minimum interest rates, risk fees, and maximum repayment terms. Although most large providers of export credit are party to the OECD Arrangement, over the past decade, an increasing amount of official export credit support is not regulated by the OECD. Much of this unregulated financing is offered by China, Brazil, India and Russia, which provide more generous terms than can be offered by the EXIM Bank and other members of the OECD Arrangement.

The charter of the EXIM Bank also requires the Bank to lend only if there is reasonable assurance that it will be repaid, and Congress subjects EXIM to statutory restrictions and oversight to safeguard its fiscal soundness, limit mismanagement, and prevent corruption EXIM also submits annually a detailed report of its operations to Congress. In addition, the Bank is required to report annually on the ways in which it has helped small businesses and improved its competitiveness in comparison to foreign ECAs. The U.S. Government Accountability Office (GAO) and the Bank’s Office of Inspector General (OIG) regularly audit the Bank’s activities.

#### *Reauthorization of the EXIM Bank*

The charter under which the Bank operates requires periodic Congressional reauthorization, and over the past 85 years, the EXIM Bank has been reauthorized 17 times, under both Democratic and Republican Administrations. In December 2015, Congress voted to renew EXIM’s operating charter through September 30, 2019.<sup>6</sup> Despite bicameral support for the Bank’s reauthorization in 2015, the Senate did not confirm the directors of EXIM until May 2019. As a result, the Bank lacked a quorum for almost 4 years, which means it was not able to approve transactions over \$10,000,000. Without the ability to consider the full range of transactions pending approval, EXIM reported that it was unable to approve \$40 billion worth of transactions, which would have supported an estimated 250,000 jobs. Last month, the Senate confirmed three new Board members of EXIM Bank, thereby reviving the agency.<sup>7</sup>

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<sup>6</sup> Public Law 114-94, December 4, 2015, Division E of the Fixing America’s Surface Transportation Act at <https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf>

<sup>7</sup> Reuters, "U.S. Senate approves EXIM Bank nominees, restores lending powers," May 8, 2019