

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

October 24, 2019

Memorandum

To: Members of the Committee on Financial Services
From: FSC Majority Staff
Subject: October 29, 2019 Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 1:00 p.m. on Tuesday, October 29, 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. 4458, the “Cybersecurity and Financial System Resilience Act” (McHenry)

Summary: The amendment in the nature of a substitute to H.R. 4458 would require the Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and National Credit Union Administration (NCUA) to each issue an annual report to Congress describing measures the respective agency has taken to strengthen cybersecurity with respect to its functions as a regulator, including the supervision and regulation of financial institutions and, where applicable, third-party service providers. The report must include steps each agency is taking to address any cybersecurity concerns identified by the annual independent evaluations conducted under the Federal Information Security Modernization Act (FISMA) of 2014. The bill sunsets after 7 years.

Background: As the financial system relies more heavily on technology, the risk that significant cybersecurity incidents targeting this technology can prevent the financial sector from delivering services, severely impacting U.S. financial stability. In December 2018, the Financial Stability Oversight Council (FSOC), which was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act to analyze and mitigate potential threats to the financial sector, released its annual report and identified cybersecurity as a key risk. FSOC recommended that “member agencies ensure a robust and consistent standard of cybersecurity monitoring and examinations of financial markets, institutions, and infrastructures. At the same time, the unique and complex threats posed by cyber risks require the public and private sectors to cooperate to identify, understand, and protect against these risks.” FSOC also expressed concerns about the increasing

use of third-party service providers (i.e. cloud computing services)¹ by financial institutions and the need to enhance oversight to strengthen cybersecurity.²

In addition, government agencies, including the Federal Reserve, FDIC, OCC, and NCUA, face cyber risks too and are required by FISMA to develop and implement an agency-wide information security program to provide information security for the systems that support the operations and assets of the agency.³ FISMA also requires an annual independent evaluation of each government agency's information security program and practices to determine the effectiveness of such program and practices.

The bill will provide updates to Congress on both regulator efforts to strengthen cybersecurity of their own information systems while also ensuring robust oversight of their regulated entities, as well as their third-party service providers, to mitigate cybersecurity risks.

Amendment in the Nature of a Substitute to H.R. 4634, the “Terrorism Risk Insurance Program Reauthorization Act of 2019” (Waters)

Summary: This bill provides a 10-year reauthorization of the Terrorism Risk Insurance Program (TRIP), which was originally established in the Terrorism Risk Insurance Act of 2002 (TRIA). The ANS would provide for a 7-year reauthorization period, require a GAO report on cyber terrorism risks, and require biennial Treasury reporting that includes disaggregated data on places of worship.

Background: In the aftermath of the September 11, 2001 terrorist attacks, terrorism risk insurance coverage became unavailable or extremely expensive as insurance companies reeled from the estimated loss of \$45 billion (in current dollars), the largest insured losses from a non-natural disaster on record. Analysts warned that the disappearance of affordable terrorism risk coverage would negatively affect the larger U.S. economy due to the importance of commercial insurance in a variety of business transactions. Congress responded by passing TRIA, which required insurance companies to offer terrorism risk insurance coverage in all eligible commercial and casualty insurance policies, and created a federal catastrophic insurance backstop to help insurance companies underwrite and price those risks.

Under TRIA, the federal government shares losses with the private sector in the event of a catastrophic terrorist event. Specifically, the federal government backstop is triggered if there was at least one “certified” act of terror, and the aggregate losses from all certified acts of terror in a given year exceed the “program trigger”, which is currently \$180 million but set to increase to \$200 million in 2020. There has never been a certified act of terrorism since the enactment of TRIA and no federal loss sharing has occurred. If there was a certified act of terror and losses that exceeded the program trigger, an individual insurer would then only benefit from federal loss

¹ For more information, see the Committee's Task Force on Artificial Intelligence hearing, “AI and the Evolution of Cloud Computing: Evaluating How Financial Data is Stored, Protected, and Maintained by Cloud Providers,” Oct. 18, 2019, <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404484>.

² FSOC 2018 Annual Report, <https://home.treasury.gov/system/files/261/FSOC2018AnnualReport.pdf>. Also see the Consumer Protection and Financial Institutions Subcommittee hearing, “Promoting Financial Stability: Assessing Threats to the U.S. Financial System,” Sep. 25, 2019, <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=110013>.

³ 44 USC 3554(b)

sharing if it reached and exceeded a deductible of 20 percent of its annual premiums. For losses exceeding an insurer's deductible the federal government provides coinsurance to cover 81 percent of losses while the insurer covers 19 percent (this share is set to adjust to 80/20 in 2020). In the event of federal loss sharing under TRIA, the federal government would then be required to establish surcharges on TRIA-eligible property and casualty insurance policies to recoup a portion or all of the federal assistance that it paid out within specified time frames in the statute.

According to a 2018 Treasury report, TRIA has largely been effective in making terrorism risk insurance available and affordable in the insurance marketplace.⁴ In fact, 78 percent of all TRIA-eligible policies included terrorism risk insurance coverage, and these entities paid an average of 2.5 percent of their total premiums for terrorism risk alone in 2017. Treasury data also showed that the take-up rate for terrorism risk insurance did not vary significantly by region (74 percent in the Northeast, 82 percent in the Midwest, 76 percent in the South, and 82 percent in the West).

Amendment in the Nature of a Substitute to H.R. 4841, the “Prudential Regulator Oversight Act” (Phillips/Loudermilk)

Summary: The amendment in the nature of a substitute to H.R. 4841 would require the Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA) to semi-annually report to and annually testify before Congress on their supervisory and regulatory activities. The Federal Reserve Vice Chairman for Supervision would continue to testify semi-annually before Congress, though the new annual testimony mandate would satisfy one of the semi-annual requirements.

Background: Section 1108 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the position of Vice Chairman for Supervision for the Federal Reserve, and requires the Vice Chairman to testify before the Committee at semi-annual hearings.⁵ While the OCC, FDIC and NCUA do not have such mandatory testimony requirements, receiving testimony from all four agencies would allow for a comprehensive examination of the state of prudential regulation, supervision, and enforcement with respect to megabanks and other depository institutions.⁶ Furthermore, before the May 16, 2019 committee hearing with prudential

⁴ Treasury, “Report on the Effectiveness of the Terrorism Risk Insurance Program,” Jun. 2018.

⁵ 12 U.S.C. § 247b.

⁶ For more information, see Congressional Research Service (CRS), “Banking Policy Issues in the 116th Congress” (Feb. 21, 2019), <https://www.crs.gov/Reports/R45518>; and CRS, “Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison” (Dec. 14, 2018), <https://www.crs.gov/Reports/IF11048>. For the most recent annual reports from each of the agencies, see Federal Reserve: <https://www.federalreserve.gov/publications/annual-report.htm>, OCC: <https://www.occ.gov/annual-report/>, FDIC : <https://www.fdic.gov/about/strategic/report/index.html>, and NCUA: <https://www.ncua.gov/news/annual-reports>. See also <https://www.federalreserve.gov/publications/supervision-and-regulation-report.htm>, <https://www.federalreserve.gov/publications/financial-stabilityreport.htm>, and <https://www.occ.treas.gov/publications/publications-by-type/semiannual-risk-perspective/index-semiannual-risk-perspective.html>.

regulators,⁷ it had been more than three years since any official from the FDIC or NCUA testified before the Committee.⁸

Regulation of depository institutions in the United States has evolved into a system with multiple regulators. Each depository institution is subject to regulation by its chartering authority, whether it is a state or federal charter. Even if state chartered, virtually all depository institutions are federally insured, and are subject to at least one federal primary regulator that examines the institution for safety and soundness, as well as compliance with federal banking laws. Depository institutions have three broad types of charters—commercial banks, thrifts (also known as “savings and loans”), and credit unions. The Federal Reserve supervises state-chartered banks that are members of the Federal Reserve System, bank and thrift holding companies and their non-depository institution subsidiaries, nonbanking activities of foreign banking organizations, and certain large nonbank financial companies and financial market utilities designated by the Financial Stability Oversight Council (FSOC). The OCC charters and supervises national banks and thrifts as well as federally licensed branches and agencies of foreign banks. The FDIC supervises state-chartered banks that are not members of the Federal Reserve System and insures all bank deposits, and the NCUA supervises all federal credit unions along with certain state credit unions that are federally insured.

Prudential regulation (or "safety and soundness" regulation) is designed to promote bank solvency and avoid bank failures, and protect taxpayers and the stability of the financial system. The Dodd-Frank Act requires enhanced prudential standards apply to the largest bank holding companies. This includes enhanced capital, liquidity and leverage requirements, stress testing, and living wills.⁹ While the four prudential regulators supervise depository institutions with less than \$10 billion in assets for compliance with consumer protection laws, the Consumer Financial Protection Bureau (CFPB) is responsible for writing consumer protection rules, and supervises depository institutions with more than \$10 billion for compliance with such rules. As of June 30, 2019, there were 5,303 FDIC-insured commercial banks and savings institutions that held a combined \$18.2 trillion in assets and \$14 trillion in deposits. With respect to credit unions, as of June 30, 2019, there were 5,308 federally insured credit unions with a combined \$1.52 trillion in assets and \$1.28 trillion in deposits.¹⁰

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

Summary: H.R. _____, the “United States Export Finance Agency Act of 2019,” would renew the operating charter of the Export-Import Bank of the United States (EXIM) for ten years, through September 30, 2029. The bill would increase the Bank’s statutory lending authority from \$135

⁷ <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403653>

⁸ The Chairs of FDIC and NCUA testified before the Committee on December 8, 2015, at a hearing entitled, “Oversight of the Financial Stability Oversight Council,”

<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399520>

⁹ CRS, *Enhanced Prudential Regulation of Large Banks*, May 6, 2019.

¹⁰ Data from most recent FDIC and NCUA Quarterly Reports, available at:

<https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-3/fdic-v13n3-2q2019.pdf> and <https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2019-Q2.pdf>.

billion to \$175 billion over a seven-year period. The bill would change the name of the Export-Import Bank of the United States to the United States Export Finance Agency. The Amendment in the Nature of a Substitute makes technical changes to the bill.

Small Business Provisions. The bill would also strengthen support for small businesses by requiring the Agency to submit a comprehensive outreach plan to Congress that would ensure small business owners are aware of the financing options available to them through the Agency, with specific emphasis on outreach to businesses owned by women, minorities, veterans, and persons with disabilities. The bill would raise the small business target threshold by the end of the 10-year authorization period from 25% to 30% of the Agency's total lending volume.

New Offices. Additionally, the bill would create an "Office of Minority and Women Inclusion" and 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.

Renewable Energy Exports, Environmental and Social Standards, and Accountability. The bill would create an "Office of Financing for Renewable Energy, Energy Efficiency, and Energy Storage Exports"; enhance EXIM's Environmental Policy and Procedures, including by ensuring robust consultation with communities potentially impacted by EXIM-supported projects; and include 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 of any failure of the Bank to follow its own procedures and policies with regard to the environmental and social impacts of its projects.

Alternative Procedures During Quorum Lapse. In the absence of a Board quorum longer than 90 days, the bill would establish a temporary Board, consisting of the Agency's current Board members (if any), the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative. The temporary Board would not have authority to change or amend Agency policies, procedures, bylaws, or guidelines. This provision would sunset in 10 years.

Risk transfer program authority made permanent. The bill would require the Agency to pursue specific objectives to reduce risk and costs to the Agency with regard to the creation of reinsurance pools, and would require the Agency to submit to Congress every two years a written assessment of its reinsurance program.

Enhances flexibility to respond to China's predatory export financing practices. Reduces the burden on EXIM and U.S. exporters to justify responding to China's predatory export credit practices through the Tied Aid Credit Fund, which can be used to offer special terms when a U.S. exporter is confronted by a subsidized offer by China when bidding for a capital project.

Restrictions on Financing for Certain Entities. Prohibits Agency financing to the Chinese Army and Intelligence Services, and bad actors known to the U.S. Government, including end users, obligors, or lenders included on U.S. export control lists; and any person who has criminally violated the Foreign Corrupt Practices Act within the preceding three years, or who is listed in the Annual Intellectual Property Report to Congress, if convicted in any court.

Prohibition on Financing for Certain Entities Involved in Sanctionable Activities. Any transaction that is subject to Board approval requires the parties to the supported transaction to certify to the Agency that neither they nor any of their subsidiaries engage in activities in violation of U.S. sanctions laws and regulations applicable to the person.

EXIM Administrative Improvements. The bill would extend the Agency's authority to use a percentage of its annual surplus for ten years to update its IT systems infrastructure, with the aggregate amount used not to exceed \$40 million. The bill would provide the Agency with limited pay flexibility for no more than 35 employees in order to attract and retain highly qualified staff to serve in key roles, particularly in financial and legal services. This authority would not apply to politically appointed employees.

Background: The Export-Import Bank of the United States (EXIM Bank, or EXIM) was established by executive order in 1934¹¹ and in 1945, became an independent Federal agency. As the official export credit agency of the United States, the Bank's mission is to promote the export of U.S. goods and services in order to help create and sustain jobs in the United States.

According to the Bank, over the last 10 years, EXIM has 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, the EXIM Bank is not allowed to compete with the private sector. Instead, the role of the Bank is to fill in gaps when the private sector lacks the capacity or willingness to provide the financing required by U.S. exporters.¹² The Bank also plays a key role offsetting the financing offered by foreign export credit agencies provide to foreign competitors of U.S. firms. EXIM is one of more than 100 export credit agencies around the world that help their home-country exporters compete in the global markets.

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).¹³ 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.

¹¹ Executive Order 6581, Creating the Export-Import Bank of Washington, February 02, 1934. See at <https://www.presidency.ucsb.edu/node/208209>

¹² "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

¹³ Organization for Economic Cooperation and Development (OECD), Arrangement on Officially Supported Export Credits. See at <https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/>

EXIM's charter 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.

In addition, the Bank is required to report to Congress each quarter on its default rate, and EXIM submits a detailed annual report to Congress on its operations, including the ways in which it has helped small businesses and improved its competitiveness in comparison to foreign export credit agencies. The U.S. Government Accountability Office (GAO) and the Bank's Office of Inspector General (OIG) also 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, 2019.¹⁴ 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 meant 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.

In May, the Senate confirmed three new Board members of EXIM Bank, thereby reviving the agency.¹⁵ On September 27th, President Trump signed a seven-week continuing resolution to keep the government open until November 21, 2019. The legislation also extended the U.S. Export-Import Bank's charter to the same date.

¹⁴ 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>

¹⁵ Reuters, "U.S. Senate approves EXIM Bank nominees, restores lending powers," May 8, 2019