



*Office of Inspector General
Export-Import Bank
of the United States*

**Report on EXIM Bank's
Activities in
Preparation for and
During its Lapse in
Authorization**

*March 30, 2017
OIG-EV-17-02*

The Export-Import Bank of the United States (EXIM Bank) is the official export credit agency of the United States. EXIM Bank is an independent, self-sustaining executive agency and a wholly-owned U.S. government corporation. EXIM Bank's mission is to support jobs in the United States by facilitating the export of U.S. goods and services. EXIM Bank provides competitive export financing and ensures a level playing field for U.S. exports in the global marketplace.

The Office of Inspector General, an independent office within EXIM Bank, was statutorily created in 2002 and organized in 2007. The mission of the EXIM Bank Office of Inspector General is to conduct and supervise audits, investigations, inspections, and evaluations related to agency programs and operations; provide leadership and coordination as well as recommend policies that will promote economy, efficiency, and effectiveness in such programs and operations; and prevent and detect fraud, waste, abuse, and mismanagement.

This evaluation was conducted in accordance with the 2012 Quality Standards for Inspection and Evaluation as defined by the Council of Inspectors General on Integrity and Efficiency. This report does not constitute a Government audit and therefore, it was not conducted following the Generally Accepted Government Auditing Standards (GAGAS).



Office of Inspector General

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Subject: Report on EXIM Bank's Activities in Preparation for and During its Lapse in Authorization

Date: March 30, 2017

Attached please find the final report on EXIM Bank's Activities in Preparation for and During its Lapse in Authorization. The report contains no recommendations for corrective action. On March 22, 2017, EXIM Bank provided its management response to a draft of this report. Management disagreed that the Bank's criteria established for training and conference attendance during the lapse was vague and inconsistent. Management also strongly disagreed with the OIG's statements regarding the Bank's cooperation and transparency with the OIG. A summary of management's comments and the OIG's response to those comments are included in this final report.

We appreciate the courtesies and cooperation extended to us during the evaluation. If you have any questions or comments regarding the draft report, please contact Mark Thorum at (202) 565-3939 or Terry Settle at (202) 565-3498.

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Attachment: Report on EXIM Bank's Activities in Preparation for and During its Lapse in Authorization, OIG-EV-17-02, March 2017

EXECUTIVE SUMMARY

Evaluation Report Lapse Activities
OIG-EV-17-02, March 2017

Why We Did This Evaluation

We completed an evaluation of EXIM Bank's activities in preparation for and during its lapse in authorization. We initiated the review as part of our annual review plan. The objectives of the evaluation were to determine: (1) what steps EXIM Bank took to plan and conduct an orderly liquidation as set forth in its Charter, and (2) if the Bank complied with the terms of its Charter and internal guidance when working on transactions and traveling during the lapse. The evaluation was conducted jointly by the Office of Inspections and Evaluations and the Office of Audits.

What We Recommend

Although our report does not make formal recommendations, OIG suggests for any future circumstances requiring EXIM Bank to limit its staff to certain functions, the Bank should implement controls to ensure (a) it establishes clear and specific criteria, (b) employees prepare and maintain proper supporting documentation, and (c) employees comply with all newly established procedures.

What We Found

EXIM Bank's Charter establishes the Bank's operations and programs and is reauthorized on a periodic basis. In May 2012, Congress reauthorized the Bank's Charter through September 30, 2014, which was subsequently extended to June 30, 2015 by a continuing appropriations resolution. On July 1, 2015, EXIM Bank's statutory authority was significantly limited under the terms of its Charter and full authority was not reinstated until December 4, 2015 when Congress extended the Bank's Charter until September 30, 2019. According to EXIM Bank, this meant its authorization to approve new transactions and engage in business development and certain other functions lapsed. During the lapse in authorization, in accordance with section 7 of its Charter the Bank was "continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank."

Our evaluation found that EXIM Bank took several steps to plan and conduct an orderly liquidation in preparation for and during its lapse in authorization. Moreover, the Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse. Finally, the Bank adhered to its established policies and procedures and complied with the terms of its Charter and guidance when approving new transactions in the months leading up to the lapse and did not authorize new transactions or increases in exposure during the lapse.

Steps taken by the Bank in preparation for and during its lapse in authorization included developing a contingency plan, action plan, and inventory of permitted and prohibited functions; conducting weekly staff meetings and mandatory trainings; revising the travel approval process; creating a workforce reshaping tools strategy; issuing a Request for Information to obtain proposals on the redesign of EXIM Bank to a portfolio risk management agency; and creating divisional workload projections.

Although EXIM Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse, we identified instances of travel that did not have sufficient justifications and documentation supporting why the travel was permitted. Of the 143 trips taken during the lapse totaling \$602,126 in travel costs, 122 totaling \$520,542 were sufficiently documented and clearly related to permitted activities. However, due to the absence of clear criteria and insufficient documentation, we were unable to definitively conclude whether the remaining 21 trips totaling \$81,584 in travel costs constituted permitted activities.

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ABBREVIATIONS AND GLOSSARY

Term	Description
Bank or EXIM Bank	Export-Import Bank of the United States.
Board	The Board of Directors, EXIM Bank, responsible for approving medium- and long-term transactions over \$10 million.
Charter	The Charter of the Export-Import Bank of the United States (Export-Import Bank Act of 1945, as amended, 12 U.S.C. §635 et seq). The Charter establishes the Bank's operations and programs and is reauthorized by Congress on a periodic basis.
CRTI	Character, Reputational and Transaction Integrity. CRTI due diligence is a process initiated by EXIM Bank to vet transaction participants, which consists of analyses of companies and individuals to identify potential fraud, corruption and integrity risks associated with parties
Delegated Authority	Delegated Authority refers to third-party banks to whom EXIM's Board had delegated the authority to approve certain types of transactions for EXIM's support.
DMD	Data Management Division, EXIM Bank
EXIM Online	EXIM Online is the Bank's asset management system of its obligors, with key records such as transaction profiles, rating reports, covenants, trip reports and key documents among
ERS	EXIM Bank Reporting System. ERS is the Bank's database that aggregates data on the Bank's obligors, transactions and
EVP	Executive Vice President, EXIM Bank
Individual Delegated Authority	Individual Delegated Authority refers to senior Bank staff to whom the Board has delegated the authority to approve certain types of transactions.
Inventory	Inventory of Permitted and Prohibited Functions. The Inventory is a list of permitted and prohibited functions developed by the Bank in preparation for the lapse in authorization.
Lapse in Authorization	On July 1, 2015, EXIM Bank's statutory authority was significantly limited under the terms of its Charter and full authority was not reinstated until December 4, 2015 when Congress extended the Bank's Charter until September 30, 2019. According to EXIM Bank, this meant its authorization to approve new transactions and engage in business development and certain other functions lapsed.
Lapse Date	The date established by EXIM Bank's Charter or continuing resolution until which the Bank is authorized to continue its full facilitation of operations.
Loan Manual	EXIM Bank's Loan, Guarantee and Insurance Manual, which sets forth the policies and procedures for due diligence, structuring and monitoring of Bank transactions.

Term	Description
OGC	Office of General Counsel, EXIM Bank
OIG	Office of Inspector General, EXIM Bank
VP	Vice President, EXIM Bank
SVP	Senior Vice President, EXIM Bank

EVALUATION REPORT ON EXIM BANK’S LAPSE ACTIVITIES

INTRODUCTION

On July 1, 2015, EXIM Bank’s statutory authority was significantly limited under the terms of its Charter and full authority was not reinstated until December 4, 2015 when Congress extended the Bank’s Charter until September 30, 2019.¹ According to EXIM Bank, this meant its authorization to approve new transactions and engage in business development and certain other functions lapsed. This is referred to as the “lapse in authorization” throughout the report. We completed an evaluation of the Export-Import Bank’s (EXIM Bank or Bank) activities in preparation for and during its lapse in authorization as of July 1, 2015 through December 3, 2015. We initiated the review as part of our annual work plan. The objectives of this evaluation were to determine: (1) what steps EXIM Bank took to plan and conduct an orderly liquidation as set forth in its Charter, and (2) if the Bank complied with the terms of its Charter and internal guidance when working on transactions and traveling during the lapse. The OIG reviewed EXIM Bank’s activities in preparation for and during the lapse to ascertain if the Bank acted within its authority.

SCOPE AND METHODOLOGY

This evaluation was conducted jointly by the Office of Inspections and Evaluations (OIE) and the Office of Audits (OA). To achieve our objectives, we reviewed applicable federal laws and guidance, including section 7 of EXIM Bank’s Charter, Public Law 112-122; Continuing Appropriations Resolution, Public Law 113-164;² internal Bank policies and guidance, and the General Accountability Office’s Standards for Internal Control in the Federal Government.³ We interviewed key EXIM Bank officials and staff and reviewed all documentation provided by the Bank to gain an understanding of the Bank’s activities in preparation for and during its lapse in authorization. We also obtained information from various internal Bank databases such as the EXIM Bank Reporting System (ERS) and EXIM Online. In addition, we consulted with the Counsel to the Inspector General about EXIM Bank’s interpretation of section 7 of the Charter.

¹ For more information, see the Export-Import Bank Reform and Reauthorization Act of 2015, included in “Division E—Export-Import Bank of the United States” of the “FAST Act,” which became public law on December 4, 2015 (Pub. L. No. 114-94) at <https://www.congress.gov/114/bills/hr22/BILLS-114hr22enr.pdf> and The Charter of the Export-Import Bank of the United States at http://www.exim.gov/sites/default/files/2015_Charter_-_Final_As_Codified_-_02-29-2016.pdf (2015 Charter).

² For more information, see The Charter of the Export-Import Bank of the United States at http://www.exim.gov/sites/default/files/newsreleases/Updated_2012_EXIM_Charter_August_2012_Final.pdf (2012 Charter), the Export-Import Bank Reauthorization Act of 2012 at <https://www.gpo.gov/fdsys/pkg/PLAW-112publ122/pdf/PLAW-112publ122.pdf> (2012 Reauthorization Act), and the Continuing Appropriations Resolution, 2015 at <https://www.congress.gov/113/plaws/publ164/PLAW-113publ164.pdf> (Continuing Resolution).

³ See <http://www.gao.gov/assets/670/665712.pdf>.

To assess EXIM Bank’s travel activities with respect to the lapse, OA reviewed 143 travel authorizations for trips taken by EXIM Bank employees between July 1, 2015 and December 4, 2015 and interviewed travelers as necessary. Travel expenses related to these 143 trips totaled \$602,126.

To assess the Bank’s transaction related activities leading up to and during the lapse, OIE reviewed 67 transactions totaling \$3.9 billion and disbursements for 28 transactions totaling \$196.1 million and interviewed Bank staff as necessary. The transactions reviewed were authorized during the four month period of March 1, 2015 through June 30, 2015, while the disbursements occurred between July 1, 2015 and December 4, 2015. The evaluation was performed at EXIM Bank’s main location in Washington, DC.

Points of Inquiry

The following two points of inquiry directed our focus and guided our evaluation:

POINT OF INQUIRY 1: What steps did EXIM Bank take to plan and conduct an orderly liquidation as set forth in its Charter?

POINT OF INQUIRY 2: Did the Bank comply with the terms of its Charter and internal guidance when (a) traveling during the lapse in authorization, and (b) authorizing new transactions in the months leading up to and during the lapse?

We conducted this evaluation from June 2016 through January 2017 in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of Inspectors General on Integrity and Efficiency.⁴ Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

BACKGROUND

EXIM Bank is an independent, self-sustaining executive agency and a wholly-owned government corporation. As the official export credit agency of the United States, EXIM Bank’s mission is to facilitate the financing of U.S. goods and services in international markets to support U.S. employment. The Bank operates under a renewable statutory authority known as its Charter.⁵ Congress sets statutory requirements for EXIM Bank’s programs and operations and available authority in its Charter. Public Law 112-122 authorized EXIM Bank’s full facilitation of operations through September 30, 2014. Congress subsequently approved a continuing appropriations resolution (Public Law 113-164), which granted a nine-month extension of the Bank’s authorization through June 30, 2015.⁶ On July 1, 2015, EXIM Bank’s statutory authority was significantly limited under the terms of its

⁴ See <https://www.ignet.gov/sites/default/files/files/committees/inspect-eval/iestds12r.pdf>.

⁵ 2015 Charter, *supra* note 1.

⁶ 2012 Reauthorization Act and Continuing Resolution, *supra* note 2.

Charter and full authority was not reinstated until December 4, 2015 when Congress extended the Bank's Charter until September 30, 2019.⁷ According to EXIM Bank, this meant its authorization to approve new transactions and engage in business development and certain other functions lapsed. This is referred to as the "lapse in authorization" throughout the report.

The primary statute governing EXIM Bank's activities during the lapse in authority was its Charter in 12 U.S.C § 635f.⁸ Pursuant to section 635f, the Bank was authorized to perform certain functions before its lapse date which could create obligations that were binding after such date for purposes of an orderly liquidation. Specifically, section 635f permitted the Bank to (1) take on loans or similar obligations prior to its lapse date that matured subsequent to such date; (2) assume prior to the lapse date liability as an insurer, guarantor, etc. of obligations that matured subsequent to such date; and (3) issue prior to the lapse date debt (in the form of "notes, debentures, bonds, or other obligations which mature subsequent to such date") generally to be purchased by the U.S. Treasury.

Consistent with these three provisions, EXIM Bank had debts, assets, and contractual duties that were entered into prior to its lapse in authorization which were valid and enforceable after its lapse date on June 30, 2015. According to section 7 of the Bank's Charter, in the event of a lapse in authorization, EXIM Bank was permitted to continue as a corporate agency of the U.S. and exercise its functions for purposes of an orderly liquidation, including (but not limited to) administering its assets and collecting any obligations it held.⁹ According to EXIM Bank management, after the lapse in authorization, the Bank was still authorized pursuant to other provisions of the Bank's Charter and other statutes to continue its role as the official export credit agency of the United States. For example, the Bank could continue as a member of various interagency councils and committees related to export credit and trade finance such as the Organisation for Economic Co-operation and Development (OECD) and Berne Union. However, Bank management stipulated that after the lapse in authorization, the Bank lacked the authority to conduct activities constituting or developing new business or increasing its exposure above amounts approved prior to the lapse date.

As a result, prior to the lapse in authorization, EXIM Bank management classified all of the Bank's functions as either "permitted" or "prohibited" during the lapse. To clearly define what was permitted and prohibited, EXIM Bank developed the Inventory of Permitted and Prohibited Functions (the Inventory). See Table 1 below for descriptions of the key terms.

⁷ *Supra* note 1.

⁸ 2012 Charter, *supra* note 2 at 62.

⁹ *Ibid.*

Table 1: EXIM Bank Lapse in Authorization – Key Terms	
Terms	Definition
Permitted Functions	Shall mean all activities related to permitted transactions, as well as ongoing functions related to the administration of the assets and obligations of the Bank after the lapse date, and any other activities determined to be permitted under section 7 of the Charter or applicable law.
Permitted Transactions	Shall mean all transactions which were approved by the Board or delegated authority (internal or external) on or prior to the lapse date.
Permitted Travel	Shall mean (a) all travel related to permitted transactions including activities related to due diligence, documenting, negotiating, closing, monitoring, asset protection and recovery, and (b) all other travel or attendance at conferences or inter-agency meetings which must be approved prior to travel.
Permitted Training	Shall mean all professional development training related to permitted functions or general skill maintenance or development training or retaining potentially reassigned or potentially displaced employees.
Prohibited Functions	Shall mean all activities related to prohibited transactions or otherwise constituting or developing new business or increasing the Bank’s exposure above amounts approved on or prior to the lapse date, forward-looking activities or any other activities determined to be prohibited under section 7 of the Charter or applicable law.
Prohibited Transactions	Shall mean transactions not approved by the Board or delegated authority (internal or external) on or prior to the lapse date or actions resulting in an increase in the Bank’s exposure above amounts approved on or prior to the lapse date.
Exposure	Shall mean the total principal amount financed in transactions approved by the Board or delegated authority (internal or external) on or before the lapse date, including the total policy limits of insurance policies and including any financed exposure fees.
Forward-looking	Shall mean any activity which assumes the reauthorization of the Bank.

Source: EXIM Bank Inventory of Permitted and Prohibited Functions

All Vice Presidents of the Bank were asked to go through their division’s section of the Inventory with their teams to ensure there was no confusion about which activities were permitted and prohibited. Further, EXIM Bank employees were required to complete a mandatory Anti-Deficiency Act training conducted by the Office of the General Counsel (OGC) which included a discussion about the permitted and prohibited functions.¹⁰ Bank

¹⁰ See Anti Deficiency Act (ADA), Pub.L. 97–258, 96 Stat. 923 at <https://www.gpo.gov/fdsys/pkg/STATUTE-96/pdf/STATUTE-96-Pg877.pdf> prescribed in sections 1341, 1342 and 1571 of title 31, U.S.C.

management stressed the importance of performing only permitted functions during the lapse in the Bank's authority. Per EXIM Bank management, working on transactions which were approved by the Board or delegated authority prior to midnight on June 30, 2015 and managing the Bank's existing portfolio of approved loans, guarantees and insurance, were permitted functions. Conversely, working on transactions not approved by the Board or delegated authority by midnight on June 30, 2015 were required to cease. Furthermore, according to the Inventory, any activity which assumed the Bank would be reauthorized was also a prohibited function.

PRINCIPAL FINDINGS AND RECOMMENDATIONS

Point of Inquiry 1: What steps did EXIM Bank take to plan and conduct an orderly liquidation as set forth in its Charter?

Applicable Standards

OIG reviewed various applicable standards and focused on the following:

1. Terms under which EXIM Bank can function upon the expiration of its authority outlined in section 7 of the Bank's Charter; and
2. Inventory of Permitted and Prohibited Functions compiled by EXIM Bank, July 1, 2015, revised during the lapse.

Finding 1: EXIM Bank took several steps to plan and conduct an orderly liquidation as set forth in its Charter.

Our evaluation determined that EXIM Bank took several steps to plan and conduct an orderly liquidation as set forth in the Bank's Charter in preparation for and during the lapse in authorization in 2015. Section 7 of EXIM Bank's Charter, Public Law 112-122 authorized EXIM Bank to "continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 2014."¹¹ Pursuant to Public Law 113-164, EXIM Bank's lapse date was subsequently extended to June 30, 2015.¹² Beginning on July 1, 2015, EXIM Bank entered the period of its lapse in authorization and in accordance with Section 7 of its Charter the Bank was "continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank." In response to an inquiry from the House Committee on Oversight and Government Reform, the Bank informed the committee that it interpreted "orderly liquidation" to be "an orderly process of managing its existing assets into maturity." In furtherance of these objectives, EXIM Bank took many actions prior to and during its lapse in authorization which are described below.

Actions Taken Prior to EXIM Bank's Lapse in Authorization

In preparation for its lapse in authorization, EXIM Bank management stipulated that key decisions would be based on the full consultation of a special senior management team comprised of the President, First Vice President, Executive Vice President (EVP), and all Senior Vice Presidents. The special senior management team provided oversight of the following actions taken prior to the Bank's lapse in authorization:

¹¹ 2012 Charter, *supra* note 2 at 62.

¹² Continuing Resolution, *supra* note 2.

June 5, 2015:

- Developed and submitted the Contingency Plan for Lapse of Congressional Authorization to the Office of Management and Budget (OMB) including (1) an analysis of permitted and prohibited functions which were defined based on Charter language and examples from current operations, (2) an action plan and timeline, and (3) responses to OMB's lapse planning questions.
- Created a nine-month action plan to prepare for an orderly liquidation in the event the lapse in authorization became permanent. The timeline identified actions and tentative dates for execution from June 2015 through February 2016. The action plan categorized the approach into administrative, interim personnel redeployment, and strategic actions which included Pre-lapse activities, Portfolio Projections Phase, Business Redesign Phase, Transition Planning Phase, and Transition Implementation Phase.

June 8, 2015: Commenced the creation of the Inventory of Permitted and Prohibited Functions (the Inventory) by office and coordinated this listing with internal and external stakeholders.

June 10, 2015: Commenced weekly All-Hands Brown Bag meetings which occurred throughout the lapse to provide congressional updates, discuss permitted and prohibited functions, and answer employees' questions regarding the lapse. Bank employees submitted questions about permitted and prohibited activities, travel, etc. through a centralized reauthorization email (reauthorizationquestions@exim.gov).

June 16, 2015: EXIM Bank's Office of General Counsel (OGC) issued an opinion stating the Bank had no successor and would continue its obligatory administration and collection of debt during the lapse in authorization. The opinion stated EXIM Bank, "will continue to exist after the lapse and will continue to exercise some of its functions in connection with... its objects and purposes." The opinion continued, "There is also clearly a significant limitation to the functions which the Bank may continue to exercise after the lapse date, however, precisely what those functions may be is left unclear and the Bank must exercise its best judgment and discretion as to the scope of those functions." The opinion also stated, "the Bank itself would have to exercise broad discretionary authority to determine the scope of its functions as it proceeded to wind-down."

June 26, 2015:

- Released the Inventory of Permitted and Prohibited Functions to EXIM Bank employees. The guidance specifically addressed each division within the Bank and provided a breakdown of all duties that were permitted and prohibited. The Inventory was continually updated throughout the lapse.
- Notified lenders, buyers, and other stakeholders to address the effect of the lapse in authorization on EXIM Bank's operations including its lenders and buyers authorities and responsibilities.
- Created the Inventory of Transactions by Division including a list of each division's permitted and prohibited transactions, by borrower, type of transaction, country, and amount. EXIM Bank used this list of transactions to determine how to manage the assets and staff during the lapse.

- Emailed all Bank employees the talking points to use when discussing the lapse with external parties.

June 29, 2015: Commenced mandatory Anti-Deficiency Act training for EXIM Bank's employees. A total of five training sessions were conducted.

June 30, 2015: Required employees to obtain two additional levels of approval from OGC and the EVP for any travel occurring during EXIM Bank's lapse in authorization. For travel related to existing loans, authorization numbers (AP) were required to be added to the reservation.

Actions Taken During EXIM Bank's Lapse in Authorization

On July 1, 2015, in accordance with section 7 of the Charter, EXIM Bank management directed employees to cease prohibited activities including those constituting or developing new business or increasing EXIM Bank's exposure above amounts approved prior to the lapse date (renewals, extensions, or increases). EXIM Bank management also directed employees to cease the development of new financial products. According to a memorandum from the now former Executive Vice President and Chief Risk Officer to the Chairman and President, "the Bank's primary mission shifted from that of an export credit agency providing financing in support of US exports to that of a portfolio and risk management agency." Pursuant to the Inventory of Permitted and Prohibited Functions, any activity which assumed the Bank would be reauthorized was a prohibited function. Employees previously assigned to prohibited functions were reassigned to activities to protect and manage the Bank's assets or to other permitted Bank functions such as the processing of FOIA requests. According to EXIM Bank, the reassignments served as a skill development opportunity to keep morale high and maintain essential employees. Beginning in July, the special senior management team held weekly meetings to address key issues related to the lapse.

Actions taken during the lapse included:

July 6, 2015: Created a workforce reshaping tools strategy based on OPM guidelines. The list of eight reshaping tools consisted of furloughs, selective freeze on new hiring, review of vacancies not in pipeline, reallocation of work assignments to post-lapse permitted functions, reassignments into vacant positions, training for reassignment to vacant positions, voluntary reassignments to lower grades, and voluntary early retirements. Bank management conducted a cost-benefit analysis and decided to reallocate employees and implement a selective hiring freeze.

August 4, 2015: The special senior management team agreed to five decision-making principles: (1) Management will endeavor to ensure that any lapse in authority is temporary and of the shortest duration possible; (2) Management will act consistently in a transparent and open manner, communicating as much as possible with all levels of staff; (3) Management will make key decisions based on full consultation in the senior team comprising of the President, First Vice President, Executive Vice President and all Senior Vice Presidents; (4) Management will treat every employee with respect and consideration throughout the process and will use its best efforts to minimize the adverse impact of a lapse on staff; and (5) Management will use its best efforts to minimize adverse impact of a lapse on clients and exporters.

September 9, 2015: Issued a Request for Information (RFI) to ten consultants which served as a prospective contract to obtain proposals to seamlessly redesign EXIM Bank in the event the lapse became permanent.

September 17, 2015: Received a request from the House Committee on Oversight and Government Reform for details with respect to the Bank's plans to wind-down, including documents and information related to the initiating of new business; guidance provided to staff; speaking engagements and participation in non-Bank meetings or conferences; travel records for Bank employees; and plans for an orderly liquidation.

September 28, 2015: Performed additional legal analysis of the Bank's functions and activities after its lapse in full authority. The analysis expanded upon the Bank's previous guidance regarding permitted and prohibited activities during the lapse. For example, it stated (1) all functions and activities that pre-existed the lapse date and were not specifically deemed to be prohibited were presumably permitted and all fell within the ambit of an orderly liquidation; and (2) certain Bank functions and activities were authorized pursuant to other provisions of the Bank's Charter and other statutes and were not contingent upon EXIM Bank itself providing export credit support to US exporters.

October 8, 2015:

- Created Divisional Workload Projections to illustrate the percentage of personnel's workload impacted due to the permitted activity restraints. The projections included a three-month timeframe which allowed for informed decision making in case of reshaping. It also included a breakdown of the personnel assigned to the separate offices and divisions.
- Responded to an inquiry from the House Committee on Oversight and Government Reform regarding the Bank's plans for an orderly liquidation. EXIM Bank stated its Charter did not terminate the Bank's existence or require it to cease exercising all of its functions immediately. The Bank informed the committee that in addition to managing the existing portfolio, EXIM Bank staff continued to work diligently on reviewing and addressing, as appropriate, recommendations from the OIG and GAO and continued to respond to an increased number of Freedom of Information Act requests. The Bank was also assessing its options for determining the optimal path for an orderly restructuring. EXIM Bank informed the Committee that in order to ensure travel by Bank staff was consistent with permitted activities, travel was limited to asset and exposure monitoring, recovery on defaulted debt, due diligence and documentation of previously approved transactions, training relevant to the continuing operations of the Bank, administrative activity supporting the continuing activities of the Bank, and conferences and interagency or intergovernmental meetings supporting the continuing management of the Bank's portfolio. After follow-up from the Committee regarding this response, the Bank provided the Committee with a list of all travel authorized between July 1 - September 17, 2015.

October 15, 2015: Received RFI responses from three of the ten consultants identifying the steps necessary to redesign EXIM Bank in the event it was not reauthorized. The RFI identified seven high level tasks and a number of subtasks necessary to redesign the Bank. Additionally, the RFI asked for statements of experience and capabilities of the consultants to undertake the tasks proposed.

November 5 - 6, 2015: The RFIs from the three consultants were summarized and presented to the Chairman. Although a consultant was not selected prior to December 4, 2015 when the Bank was reauthorized, the special senior management team stated that if the lapse had continued much longer an award of the contract would have been made. Upon award of the contract, the RFI identified that work to redesign the Bank would commence within two weeks and all the identified tasks and subtasks would be completed in 120 days.

RECOMMENDATIONS

OIG does not make any recommendations related to this finding.

Management's comments on this report are included in their entirety in Appendix A. A summary of management's comments and the OIG response relevant to each finding is summarized within the report.

Management Comments:

EXIM Bank management noted it was the first time in the Bank's long history that it went through a lapse in authority. As such, it was a unique situation with no guidance provided to the Bank. The Bank analyzed and interpreted its Charter language, in Section 7 and elsewhere, as well as other statutes, to ensure there was full compliance with the law in the manner in which the Bank managed its operations during the period of the lapse in authority. This analysis and interpretation was a continuing and constant process throughout the lapse in authority as new situations were presented.

OIG Response:

Management's comments were responsive to our finding.

Point of Inquiry 2: Did EXIM Bank comply with the terms of its Charter and internal guidance when (a) traveling during the lapse in authorization, and (b) authorizing new transactions in the months leading up to and during the lapse?

Applicable Standards, Terms and Conditions

OIG reviewed various applicable standards and focused on the following:

1. Terms under which EXIM Bank can function upon the expiration of its authority outlined in section 7 of the Bank's Charter;
2. Inventory of Permitted and Prohibited Functions compiled by the Bank, July 1, 2015, revised during the lapse;
3. Policies and procedures for travel outlined in EXIM Bank's Travel Policy, October 1, 2011;

4. Regulations and guidance applicable to federal agencies for record keeping and related internal control activities outlined in Title 44 U.S.C. § 3101, Records management by agency head; general duties,¹³ and GAO-14-704G, Standards for Internal Controls in the Federal Government, September 2014;¹⁴
5. Policies and procedures for approving new transactions outlined in chapters 6, 7, 15, and 16 of the Bank’s Loan, Guarantee and Insurance Manual, revised in 2015;
6. Procedures for environmental impact assessments outlined in section IV of the Bank’s Environmental and Social Due Diligence Procedures and Guidelines, June 27, 2013, revised December 12, 2013; and
7. Authority delegated to senior Bank officials by the Board outlined in the Individual Delegated Authority Board Resolution as of July 26, 2010.

Finding 2: Although EXIM Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse, we identified instances of travel that did not have sufficient justifications and documentation supporting why the travel was permitted.

Our evaluation found that EXIM Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse in authorization; however, we identified instances of travel that did not have sufficient justifications and documentation supporting why travel was permitted.

During the lapse, EXIM Bank personnel traveled a total of 143 times – 94 trips for due diligence or monitoring, 21 trips for meetings, 11 trips for training, and 17 trips for conferences. Travel costs for the 143 trips totaled \$602,126. All 115 trips for due diligence or monitoring and meetings and seven of the 11 trips for training were supported by sufficient documentation to conclude the travel was permitted. As a result, 85 percent of the trips taken and 86 percent of the travel costs (\$520,542) incurred during the lapse were sufficiently documented and clearly related to permitted activities.

Of the remaining 21 trips taken during the lapse totaling \$81,584 in travel costs, four were for training and 17 were for conferences. However, due to the absence of clear criteria to assess the allowableness of the travel and sufficient documentation to justify the travel, we were unable to definitively conclude whether the trips constituted permitted activities.

We found that the Bank established vague and inconsistent criteria in terms of what would be permitted for training and conference attendance during the lapse. On June 26, 2015, the Bank released its Inventory of Permitted and Prohibited Functions to EXIM Bank employees. Permitted functions were defined as those activities related to permitted transactions and ongoing functions related to the administration of the assets and obligations of the Bank. Likewise, prohibited functions included all activities constituting or

¹³ See <http://www.archives.gov/about/laws/fed-agencies.html>.

¹⁴ *Supra* note 3.

developing new business and forward-looking activities (i.e., activities which assumed the reauthorization of the Bank). In defining permitted travel, however, it appears the Bank expanded its definition of a permitted function by allowing “all other travel or attendance at conferences or inter-agency meetings which must be approved prior to travel.” The definition of permitted training was also vague as it included “general skill maintenance or development training.” These last two definitions made it unclear as to exactly which training and conferences could be attended. During our evaluation, Bank management stated that instead of prescribing detailed criteria, the Bank opted to establish general criteria alongside a requirement that any travel would require an additional two levels of approval from Bank management.

On September 28, 2015, OGC performed additional legal analysis of the Bank’s functions and activities after its lapse in authorization, noting that based on the strong support for the reauthorization of the Bank expressed in both houses of Congress, the expectation was that Congress would reauthorize the Bank in the near future. While not provided to EXIM Bank managers or employees as guidance, the Office of General Counsel stated that this additional analysis informed its advice and decisionmaking as to what constituted permissible activities during the lapse.

The legal analysis quoted the Congressional Research Service as stating “given the dearth of statutory, administrative, and judicial guidance on the meaning of ‘orderly liquidation’ pursuant to section 635f, the Bank would appear to have considerable discretion in structuring its ‘orderly liquidation’ in the absence of any relevant statutory changes to Section 635f.”

While the analysis reiterated the Bank’s previous guidance on permitted and prohibited functions, it further stated (1) it was within the Bank’s reasonable discretion to weigh the continuation of certain functions and activities against the costs of ceasing those activities, in the context of an expected reauthorization; (2) EXIM Bank could participate in meetings and negotiations related to the establishment of common rules applicable to the provisions of export credits and serve as a member of various interagency councils and committees related to export credit and trade finance; and (3) the lack of specificity regarding permitted and prohibited functions and activities in section 7 of the Charter left open the possibility of additional unlisted functions and activities that may also be permissible because there was no language in the Bank’s Charter restricting the Bank’s authority to engage in activities and functions that may not be strictly related to an “orderly liquidation.”

Nevertheless, in response to an inquiry from the House Committee on Oversight and Government Reform, on October 8, 2015, EXIM Bank informed the Committee that in order to ensure travel by Bank staff was consistent with permitted activities, travel was limited to asset and exposure monitoring, recovery on defaulted debt, due diligence and documentation of previously approved transactions, training relevant to the continuing operations of the Bank, administrative activity supporting the continuing activities of the Bank, and conferences and interagency or intergovernmental meetings supporting the continuing management of the Bank’s portfolio. This response was not consistent with the Bank’s previously established guidance related to training and conferences attended during the lapse and there was no mention of the September 28, 2015 legal analysis. After follow-up from the Committee regarding this response, the Bank provided the Committee with a

list of all travel authorized between July 1 - September 17, 2015. While this list included a column for the “detailed travel purpose,” the information contained in this column did not provide enough detail to determine how the travel was permitted.

EXIM Bank Established Review Procedures for All Travel Taken During the Lapse

Prior to the lapse, EXIM Bank established review procedures to ensure all travel taken during the lapse was permitted. These new procedures required two additional levels of approval by the OGC and EVP. Additionally, for travel associated with the due diligence and monitoring of an existing loan, an authorization number (AP) – the transaction number associated with an existing transaction – was required to be added to the reservation. EXIM Bank’s travel system, Concur, was revised to reflect these new procedures. OGC also developed a Request for Travel Approval Form, which required the purpose, detail of the trip, and a justification for why the trip was a permitted function.

We determined the 115 trips associated with due diligence or monitoring and meetings were approved prior to travel, associated with existing transactions, and had adequate documentation to justify the trips. The remaining 28 trips were for training and conferences, which required an enhanced level of review. We found that four of the 11 trips for training totaling \$2,872 in travel costs did not have sufficient documentation explaining why the travel was permitted. Furthermore, we could not easily discern whether the 17 trips totaling \$78,711 in travel costs for EXIM Bank personnel to attend various conferences during the lapse were related to permitted activities.

Seven of the 11 trips taken for training were supported by sufficient documentation demonstrating they were for permitted activities, including training related to monitoring petroleum extension liquefied natural gas projects, the Cape Town Convention regulations, and copyright-compliance best practices. Justifications for four of the training trips totaling \$2,872 in travel costs, however, were not readily available because the Request for Travel Approval Forms were not always provided or were incomplete. As a result, the purpose, detail, and justification for why each trip was a permitted function were not always included in the supporting documentation.

Although these trips received the two required additional levels of approval, they may have been forward- looking in nature which was disallowed by the Inventory of Permitted and Prohibited Functions. Specifically,

- Two trips to New York City (August 26 – 30, 2015 and December 2 -3, 2015) totaling \$1,059 in travel costs were taken by a Senior Loan Officer to take an International Air Transport Association (IATA) exam in connection with a training course – Airline Finance and Accounting Management. During our exit conference, Bank personnel provided a memorandum that stated, “Because of the lapse in Ex-Im Bank’s authority, the Senior Loan Officer was encouraged by the Vice President of the Transportation Division to identify permitted training opportunities to maintain and further develop his skills. Accordingly, the International Air Transport Association training complies with the definition of “Permitted Training.” This explanation, however, still did not justify why the training was a permitted activity and the Senior Loan Officer that took the exam stated his primary job was to analyze and underwrite airline credits and these courses would maintain his airline analysis skills.

- Two trips totaling \$1,813 in travel costs were taken on November 12-13, 2015 by regional Bank staff for a Moody's Credit Writing Class in Washington D.C. Bank personnel provided a statement that this training was permitted because this was a writing skills course.

During the lapse there were a total of 17 trips for conferences totaling \$78,711 in travel costs. Due to the vagueness of the established criteria, we could not easily discern whether the conference attendance during the lapse by EXIM Bank personnel was related to permitted activities. The trips were not supported by the Request for Travel Approval forms and therefore the purpose, detail, and justification for why each trip was a permitted function were not included in the supporting documentation. Furthermore, attendance at these conferences may have been prohibited as the missions and agendas for the conferences appeared to be forward-looking in nature. Given that EXIM Bank management recognized training and conference attendance during the lapse would be highly scrutinized, a detailed justification and supporting documentation of how the attendance related to the current operations of EXIM Bank was expected. A description of each conference attended is presented below.

- EXIM Bank's Chairman travelled to New York September 25 – 29, 2015, incurring \$1,736 of travel costs, to attend the Clinton Global Initiative (CGI) 2016 Annual Meeting which provided a "global stage to amplify the impact of members' Commitment to Action ... for shaping the global development agenda." According to the documentation provided by EXIM Bank personnel, "the Chairman traveled the evening of Friday September 25th to NYC and held meetings over the weekend as well as Monday and Tuesday of the following week. Over the weekend of the 26 – 27th the Chairman attended a number of meetings at the CGI conference where he discussed the state of the global economy, gained information about the state of the global economy and how that may impact the Bank's existing portfolio. Monday and Tuesday – in addition to attending CGI events, the Chairman met with a Bank customers about the state of their existing (previously approved) transactions. He met with the government officials including the Pakistani Finance Minister to explain what [the Bank's] lapse meant to their desire to finance power transactions ... and he met with the UAE Minister of State to discuss the state of their economy. He also received a briefing on the economy in China."

In response to our draft report findings, the Bank stated, "The Chairman is the head of a federal agency engaged in international trade. His views on the state of the global economy are of interest to other government officials. Also, speaking in general terms about the state of global trade is not a prohibited activity. Furthermore, the informed views of other government officials about the global economy may have direct bearing on EXIM's portfolio management responsibilities."

- A Senior Vice President (SVP) of the Business and Product Development Division travelled to Barcelona, Spain September 5 – 11, 2015 to attend the Global Export Finance Conference. Travel costs for this trip totaled \$3,303. The attending SVP stated the purpose of attending was to participate in a panel discussion on "The Best Model for Banks Under Current Market Conditions: Originator, Underwriter, Partner or Both?" Prior to attending the conference the SVP emailed the conference

organizers to ensure he did not engage in any activity that was prohibited such as activities of business development. The SVP stated that his attendance also allowed him to communicate with Bank debtors and explain the Bank was not closing in a fashion that would allow the debtors to forgo their debts.

- Nine Bank employees attended Organisation for Economic Co-operation and Development (OECD) Conferences held in Paris, France – two on September 15 -18, 2015, two on October 26 – 30, 2015, and five on November 17 – 21, 2015 - resulting in \$29,477 of travel costs. The mission of the OECD is to promote policies to improve the economic and social well-being of people around the world by providing a forum in which governments work together. During our evaluation, EXIM Bank management stated it considered attendance at the OECD conference to be permissible travel because EXIM Bank is the official technical expert to Treasury in the OECD negotiations and has the responsibility to attend the meetings and provide the critical technical advice to Treasury on the credit negotiations. According to EXIM Bank management, section 7 of the Charter did not prohibit EXIM Bank from providing technical advice to Treasury regarding credit negotiations. However, without the required justifications and documentation supporting the trips, we could not determine if the nine trips were necessary to meet this objective.
- Five Bank employees attended Berne Union Conferences incurring \$43,327 of travel costs. The mission of the Berne Union is to (1) actively facilitate cross-border trade by supporting international acceptance of sound principles in export credits and foreign investment and (2) provide a forum for professional exchange, sharing of expertise, and networking amongst members. One employee attended a conference in London on August 1, 2015, another employee attended a conference in Prague on September 30, 2015, and three employees attended a conference in Shanghai on October 31, 2015. During our evaluation, EXIM Bank management stated it considered attendance at the Berne Union conferences to be permissible travel because Berne Union meetings provide Bank staff and management with an opportunity to interact with their counterparts and share/gather information, insights, and best practices regarding matters that the Bank would be required to continue to monitor. Specifically, the Berne Union meetings provided staff with important information such as (1) other export credit agencies' experiences with claims, arrears, and recovery trends that provide insights for risk/portfolio management purposes and (2) data, data validation, and insights used to accurately produce EXIM Bank's congressionally mandated Competitiveness Report. According to EXIM Bank management, section 7 of the Charter did not affect the congressional mandate requiring EXIM Bank to produce an annual competitiveness report. However, without the required justifications and documentation supporting the trips, we could not determine if the five trips were necessary to meet this objective.
- One EXIM Bank employee attended the Clean Energy Finance Forum (CEFF) held in New Delhi on September 8 – 10, 2015 incurring \$869 of travel costs. The CEFF supports international cooperation to promote the growth of energy finance markets including solar energy. During our evaluation, EXIM Bank management stated it considered this permissible travel because Bank staff would provide expert advice on the development of financial instruments, acceptable terms and

conditions for project documents, and the technical requirements acceptable to international lending for the solar industry and general infrastructure in India.

RECOMMENDATIONS

OIG does not make any recommendations related to this finding.

Management's Comments:

Management disagreed that the criteria established by the Bank for specific permitted activities for training and conference attendance were “vague and inconsistent”. The Bank noted the lapse was a unique situation which caused the Bank to continuously analyze its authority and make determinations on permitted activities. Regarding travel, the Bank stated it instituted several additional layers of approval going up to senior management for travel and attendance at trainings and conferences as guidance could not be expected to cover every possible circumstance. Management stated that all training and conference attendance was approved by the Bank and was consistent with guidance on permitted activities.

Further, management stated the Bank properly responded to an inquiry from the House Committee on Oversight and Government Reform and provided significant detail to the Committee regarding information and documentation related to travel. Management noted that the Committee did not request greater detail for all authorized travel and made no further inquiries on this point.

OIG Reponse:

We continue to support our conclusion that criteria established by the Bank for for training and conference attendance during the lapse were “vague and inconsistent”. As stated in our report, the overarching guidance on permitted and prohibited activities as it related to travel and conference attendance was unclear. Permitted activities included ongoing functions related to the administration of assets and obligations of the Bank. Prohibited functions included all activities constituting or developing new business and forward-looking activities (i.e., activities which assumed the reauthorization of the Bank). In defining permitted travel; however, the Bank allowed “all other travel or attendance at conferences or inter-agency meetings which must be approved prior to travel.” The definition of permitted training was also vague as it included “general skill maintenance or development training.” These last two definitions made it unclear as to exactly which training and conferences could be attended during the lapse.

Consequently, the justifications and supporting documentation for the determinations made by management and required by the Bank’s internal guidance, were critical to our evaluation of whether the travel was permitted. As stated in our report, we could not conclude whether the trips constituted permitted activities because the criteria were vague and inconsistent and documentation justifying some trips was not presented.

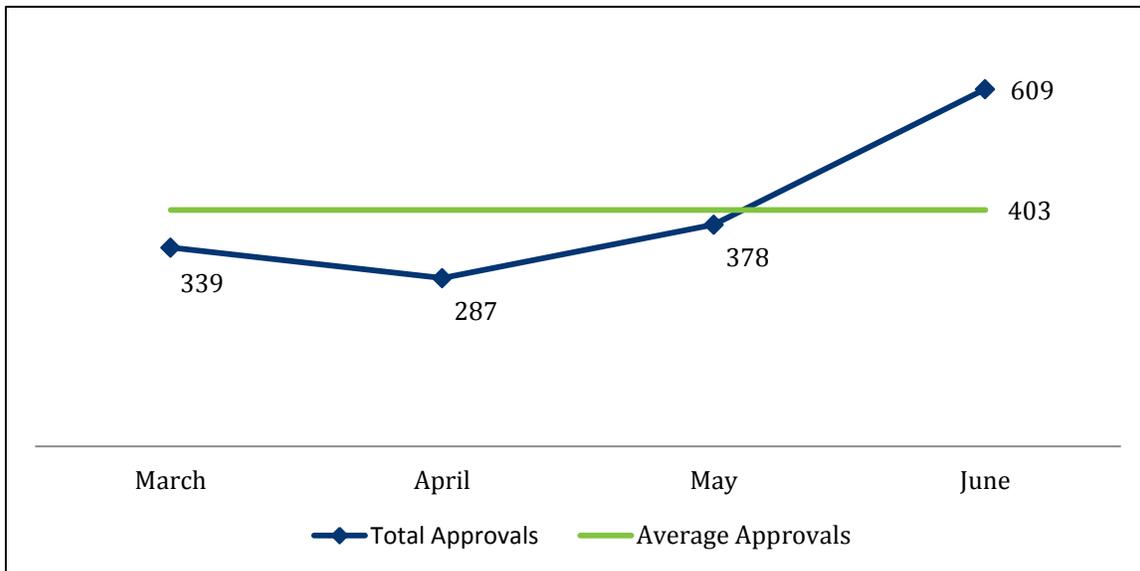
While the Bank stated it provided significant detail to the House Committee on Oversight and Government Reform regarding information and documentation related to travel and conference attendance, we found the list of travel that was provided by the Bank was not detailed. The list included columns for “Travel Purpose” and “Detailed

Travel Purpose”. However, there was no significant detail provided in either column. The “Travel Purpose” column included descriptions such as “training”, “monitoring”, “due diligence” and “Export Credit Agency” and the “Detailed Travel Purpose” column included descriptions such as “Training-internal”, “Training-external”, “Berne Union”, “OECD”, and “external meetings”. This high level information does not provide enough detail to demonstrate whether the travel was permitted.

Finding 3: EXIM Bank complied with its Charter and internal policies and procedures when approving new transactions in the months leading up to the lapse in authorization.

We evaluated whether the Bank approved new transactions in the period prior to the lapse in accordance with its Charter and internal policies and procedures. Although transaction approvals increased prior to the lapse, as shown in Figure 1 below, we did not find any instances where steps were taken to shorten or circumvent the procedures for approving transactions in the months leading up to the lapse. Further, we found that the Bank complied with its Charter and internal policies and procedures when approving new transactions prior to the lapse.

Figure 1: EXIM Bank Transaction Approvals Four Months Before Lapse



Source: EXIM Bank’s ERS

To determine whether new transactions or increases in exposure were approved in a manner consistent with the Bank’s Charter and internal policies and procedures, we judgmentally selected 67 transactions totaling \$3.9 billion for review.¹⁵ The transactions varied by type (direct loan, guarantee or insurance), term (long, medium or short), and

¹⁵ See Appendixes B and C for further details on the selection and testing methodologies.

approval mechanism (Board, delegated authority (internal or external)). All of the transactions were approved during the four-month period of March 1, 2015 through June 30, 2015.

We reviewed the transactions to determine whether or not they underwent a Character, Reputation, and Transaction Integrity (CRTI) review, credit analysis, and environmental impact assessment and if there was input from the Bank's OGC. We found that all 67 transactions underwent the level of review that EXIM Bank's internal policies and procedures required given the size, term length, and risk of the transaction. We did not find any instances in which a transaction failed to align with the Bank's internal policies and procedures.

RECOMMENDATIONS

OIG does not make any recommendations related to this finding.

Finding 4: EXIM Bank did not authorize any new transactions or increases in exposure during the lapse in authorization.

EXIM Bank's OGC took the lead on determining which functions the Bank could continue performing after the termination of its authority and which functions needed to be halted as of July 1, 2015. As discussed above, the Bank issued an official Inventory of Prohibited and Permitted Functions that laid out which functions contributed to forward looking endeavors and were thereby prohibited and which functions merely served to maintain existing accounts and were thereby permitted.¹⁶

Under OGC's guidance, EXIM Bank interpreted section 7 of the Charter to mean that the termination of the Bank's authority included a cessation of its ability to create new business. Accordingly, the Bank prohibited its divisions from committing the Bank to any new obligations or engaging in any new business deals during the lapse. To provide an additional control, the Bank shut down EXIM Online, one of its computerized systems used for processing applications and storing supporting documentation.

We found that EXIM Bank did not authorize any new transactions or increases in exposure during the lapse in authorization. To assess transaction related activities, we used disbursement data to identify transactions that were active during the lapse and confirm their authorization date.¹⁷ Of the 5,327 disbursements, we identified 28 transactions totaling \$196.1 million that had authorization dates between June 30, 2015 and December 4, 2015. Through interviews with senior Bank staff and examination of supporting documentation we determined that all 28 transactions related to fees on loan renewals that were agreed upon prior to the Bank's lapse in authorization.

¹⁶ See pages 3-5 of this report.

¹⁷ *Supra* note 15.

RECOMMENDATIONS

OIG does not make any recommendations related to this finding.

Other Matter: Documentation requested was not provided timely

At the start of our evaluation in June 2016, OIG requested all documentation related to the activities of the Bank during its lapse in authorization. Additionally, the Bank was given advance notice of our evaluation findings as early as November 2016. Nevertheless, Bank staff did not provide the September 28, 2015 legal analysis discussed above to the OIG until after the exit conference on February 9, 2017. Failing to disclose this document to the OIG was not in line with the key principle established by the special senior management team to act consistently in a transparent and open manner. It also resulted in an approximate one month delay of our evaluation and raised concerns about the Bank's level of cooperation with the OIG during audits and evaluations.

Although we are not making a formal recommendation regarding this matter, in the future it is critical for the Bank to provide all requested information to the OIG in a timely manner to avoid obstructing the normal course of an OIG audit or evaluation.

RECOMMENDATIONS

OIG does not make any recommendations related to this other matter.

Management Comments:

Management strongly disagreed with statements made in the report regarding the Bank's cooperation and transparency with the OIG. The Bank stated it produced thousands of pages of documents to the OIG and numerous Bank employees were interviewed. Specifically, Management stated the assertion by the OIG that the Bank in any way was "obstructing" the OIG efforts or was not "transparent" in this evaluation is incorrect. The Bank explained that prior to the exit conference, the OIG communicated that the finding revolved around supporting documentation on specific Bank-related travel, but upon receiving the discussion draft report, the Bank was surprised the report seemed to assume a legal interpretation of the Bank's Charter provisions inconsistent with the Bank's own interpretation. After the exit conference the Bank immediately provided an additional relevant OGC legal memorandum. The Bank stated this memorandum had not been provided earlier because it was not clear to Bank staff that its contents were within the scope of the OIG evaluation, which Bank management understood to relate to actions taken by the Bank, rather than the fundamental legal analysis underpinning those actions.

OIG Reponse:

We appreciate the cooperation of the Bank officials in providing documents and participating in interviews throughout the evaluation. Our report did not assert the Bank obstructed this evaluation; rather, the "other matter" serves as a reminder to the Bank that it is critical to provide all requested information to the OIG in a timely manner to avoid obstructing the normal course of OIG audits or evaluations in the future.

The September 28, 2015 legal analysis by the Office of General Counsel (OGC) was a critical document which informed OGC's advice and decisionmaking as to what constituted permissible activities during the lapse. This analysis reflected an evolution by OGC from its original legal analysis regarding the permitted activities of the Bank during the lapse in authorization.

At the start of our evaluation, the Bank provided the OIG with the legal analysis prepared by OGC on June 16, 2015 which served as the fundamental legal analysis underpinning the guidance provided to Bank employees prior to and during the lapse in authorization. During the evaluation, we prepared a timeline of all activities taken by the Bank prior to and during the lapse which was created based on the documentation obtained from the Bank. The timeline included the June 16, 2015 legal analysis and was provided to the Bank for review. The Bank recognized the importance of providing the original legal analysis during our evaluation and therefore, should also have recognized the importance of providing the subsequent legal analysis. These analyses fell within the scope of "actions taken by the Bank during the lapse". The omission of this legal analysis was never mentioned upon the Bank's review of our draft timeline, which occurred as early as November 2016. Furthermore, in reviewing the travel and conference attendance in question also provided in November 2016, it should have been clear to the Bank that this legal analysis was critical to our evaluation and needed to be provided.

The OIG did not "assume" a legal interpretation of the Bank's Charter in the report. Rather, we presented the facts from the evidence obtained during our evaluation. The Bank's June 16, 2015 legal analysis and its Inventory of Permitted and Prohibited Functions demonstrated the Bank's interpretation and guidance to staff during the lapse which was supported by multiple interviews with Bank management and staff throughout the evaluation. With clear evidence supporting the Bank's interpretation and guidance, the finding *did* revolve around the Bank's lack of supporting documentation for specific Bank-related travel. As the Bank stated, the September 28, 2015 legal analysis also informed OGC's advice and decisionmaking as to what constituted permissible activities during the lapse. Therefore, we continue to support our position that the Bank's failure to disclose the analysis to the OIG raised concerns about the Bank's level of cooperation with the OIG during audits and evaluations.

Other Matter: EXIM Bank's recordkeeping systems and practices need improvement

Our review of transaction related activities before and during the lapse revealed that EXIM Bank's record keeping systems and practices need improvement.

With respect to this review, OIG observed that certain data fields in ERS are not self-explanatory and the system lacks a reference tool, such as a data dictionary to explain what each data field represents. This can pose a significant hurdle for new users and lead to unnecessary delays. For example, a data request for this evaluation was delayed for over two months because the Bank's Data Management Division (DMD) could not be certain as to what data was being represented in one of the fields in ERS that appeared to be applicable to our data request.

Further, in response to questions we had concerning authorization dates, we were informed by Bank staff that the dates displayed in ERS were not always precise and could

vary because ERS sometimes captures the date an event is entered into the underlying system as opposed to the date the actual event occurred. Therefore, a manual review of supporting documentation by Bank staff was required to determine which date was being displayed for the transactions in question.

We also found that the Bank's adherence to its own recordkeeping requirements is inconsistent. For a number of transactions reviewed, we could not locate information or documentation where Bank manuals and staff indicated it should be stored.

RECOMMENDATIONS

In a prior audit report (OIG-AR-15-07), OIG made four recommendations to improve the accuracy, completeness and reliability of data recorded in the Bank's ERS.¹⁸ Bank management agreed to those recommendations and established a time frame for completion. The other matter above concerning the Bank's recordkeeping supports similar recommendations.

In its management response, for the two recommendations that remain open, the Bank agreed to correct the identified errors in ERS, review the cause of the errors, and revise the processes or procedures, as appropriate. The Bank also agreed to conduct a comprehensive review to determine whether the currently-recorded ERS data are accurate and supported. Management's actions to address the open recommendations appear to be responsive to both the prior audit report and the other matter above. Therefore we are not making any new recommendations.

¹⁸ See EXIM Bank OIG's Independent Auditor's Report on the Export-Import Bank's Data Reliability (OIG-AR-15-07, dated September 28, 2015), available at http://www.exim.gov/sites/default/files/oig/reports/FINAL%20DATA%20RELIABILITY%20FOR%20ISSUANCE%20092815_final.pdf.

CONCLUSION

Our evaluation found that EXIM Bank took several steps to plan and conduct an orderly liquidation in preparation for and during its lapse in authorization. Moreover, the Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse. Finally, the Bank adhered to its established policies and procedures and complied with the terms of Charter and guidance when approving new transactions in the months leading up to the lapse and did not authorize new transactions or increases in exposure during the lapse.

Although our report does not make any formal recommendations, OIG suggests for any future circumstances requiring EXIM Bank to limit its staff to certain functions, the Bank should implement controls to ensure (a) it establishes clear and specific criteria, (b) employees prepare and maintain proper supporting documentation, and (c) employees comply with all newly established procedures.

APPENDIXES

Appendix A: Management Response



Reducing Risk. Unleashing Opportunity.

March 22, 2017

Mr. Michael McCarthy
Acting Inspector General
Office of the Inspector General
Export-Import Bank of the United States
811 Vermont Avenue NW
Washington, DC 20571

Dear Acting Inspector General McCarthy,

Thank you for providing the Export-Import Bank of the United States (“EXIM” or “the Bank”) management with the Office of the Inspector General’s (OIG) “Evaluation of the Export-Import Bank’s Activities in Preparation for and during its Lapse in Authorization Between July 1, 2015 and December 4, 2015 (A-16-002-00)” (March 2017) (“Lapse Evaluation”). Management continues to support the OIG’s work which complements EXIM’s efforts to continually improve its processes. EXIM Bank is proud of the strong and cooperative relationship it has with the OIG.

EXIM appreciates the auditors acknowledging that “the Bank adhered to its established policies and procedures when approving new transactions in the months leading up to the lapse and did not authorize any new transactions or increases in exposure during the lapse.” Additionally, EXIM appreciates that the auditors and inspectors made no recommendations to the Bank and noted that “the Bank generally complied with the terms of its Charter and internal guidance for travel taken during the lapse.” The Bank is committed to full cooperation with the OIG and will continue to support its mission.

It is important to note that this was the first time in the Bank’s long history that it went through a lapse in authority. As such, this was a unique situation with no guidance provided to the Bank. The Bank analyzed and interpreted its Charter language, in Section 7 and elsewhere, as well as other statutes, to ensure there was full compliance with the law in the manner in which the Bank managed its operations during the period of the lapse in authority. This analysis and interpretation was a continuing and constant process throughout the lapse in authority as new situations were presented.

The Bank disagrees that the criteria established by the Bank for specific permitted activities for training and conference attendance were “vague and inconsistent.” As noted above, the Bank’s lapse was a unique situation which caused the Bank to continuously analyze its authority and make determinations on permitted activities. The Bank, as was noted in the report, instituted several additional layers of approval going up to senior management for travel and attendance

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at trainings and conferences. As guidance could not be expected to cover every possible circumstance, the guidance allowed for determinations to be made by managers and senior management. All training and conference attendance was approved by the Bank and was consistent with guidance on permitted activities.

The Bank properly responded to the House Committee on Oversight and Government Reform (“HOCR”) inquiry. In particular, the Bank provided significant detail to the Committee regarding information and documentation related to travel and conference attendance. When the Committee requested specific justification for a travel authorization, EXIM provided a full and complete response. The Committee did not request greater detail for all authorized travel and made no further inquiries on this point.

Bank management strongly disagrees with statements made in this report regarding the Bank’s cooperation and transparency with the OIG. The Bank produced thousands of pages of documents to the OIG and numerous Bank employees were interviewed. The assertion by OIG that the Bank in any way was “obstructing” the OIG efforts or was not “transparent” in this evaluation is incorrect. The OIG refers to a legal memorandum that was not timely provided by the Bank. Prior to the exit conference, the OIG communicated to the Bank that the finding revolved around supporting documentation on specific Bank-related travel. Upon receiving the draft Report and discussion during the exit conference, the Bank was surprised that the report seemed to assume a legal interpretation of the Bank’s Charter provisions inconsistent with the Bank’s own interpretation. After the exit conference the Bank immediately provided the relevant OIG legal memorandum. This memorandum had not been provided earlier because it was not clear to Bank staff that its contents were within the scope of the OIG evaluation, which we understood to relate to actions taken by the Bank, rather than the fundamental legal analysis underpinning those actions.

We thank the OIG for your efforts to ensure the Bank’s policies and procedures continue to improve, as well as the work you do with us to protect Ex-Im funds from fraud, waste, and abuse. We look forward to strengthening our working relationship and continuing to work closely with the Office of the Inspector General.

Sincerely,



Charles J. Hall
Chairman of the Board of Directors and President - acting

Appendix B: Transaction Selection Methodology

EXIM Bank Transaction Related Activities Prior to the Lapse

To assess the Bank's transaction related activities leading up to the lapse in authorization, we judgmentally selected the 67 transactions totaling \$3.9 billion (\$3,921,833,089.36) from a list of transactions approved between March 1, 2015 and June 30, 2015 inclusive, the four month period before the lapse. The list of transactions was obtained by the Bank's Data Management Division through query of the EXIM Bank Reporting System (ERS), a database that aggregates data on the Bank's obligors, transactions and exposures.¹⁹ The list consisted of 1,613 unique identifiers from the Bank's Legacy General Accounting system (LGA keys), totaling over \$8.0 billion. Of the LGA keys, there were 1,530 distinct deal numbers (i.e., transactions) and 83 duplicates. For each transaction, the following data fields were provided:

- Deal Number
- Authorized Date
- Authorized Amount
- Bank Exposure Amount
- Relationship Manager Name
- Product and Country of Origin

Of the 67 transactions, 21 required approval by the Bank's Board of Directors while 46 did not. Transactions that require board approval generally have term lengths over seven years, are greater than \$10 million, and/or support nuclear or military purposes. All other transactions can be approved by delegated authority (internal or external). The remaining 46 transactions consisted of medium-term transactions, short-term insurance policies, Global Credit Express transactions, Fast Track Facilities, and transactions subject to delegated authority.

EXIM Bank Transaction Related Activities During the Lapse

To assess the Bank's transaction related activities during the lapse in authorization, we reviewed a list of disbursements obtained from the Bank's ERS for evidence of activity between July 1, 2015 and December 4, 2015 to identify transactions that were active during that time period and confirm their authorization date.²⁰ The data consisted of 5,327 disbursements and was provided by the Office of the Chief Financial Officer. For each disbursement, the following data fields were provided:

- Deal Number
- LGA Key

¹⁹ The list of transactions was dated August 25, 2016.

²⁰ The list of disbursements was dated November 3, 2016.

- Authorized Date
- Program Description
- Term Code
- Risk Country – Country Name
- Operative Date
- Effective Date
- Disbursement GL Date
- Amount (Authorized)

We reviewed the list of disbursements to identify approval dates (i.e., authorization dates) that occurred between July 1, 2015 and December 4, 2015. Of the 5,327 disbursements, we identified 28 transactions totaling \$196.1 million (\$196,055,999) that had approval dates during the lapse in authorization.

Appendix C: Transaction Testing Methodology

To assess the Bank's transaction related activities leading up to and during the lapse in authorization, OIE reviewed 67 transactions totaling \$3.9 billion authorized during the four-month period of March 1, 2015 to June 30, 2015 and 28 transactions totaling \$196.1 million for which there were disbursements between July 1, 2015 and December 4, 2015.

EXIM Bank Charter and Internal Policies and Procedures

EXIM Bank's policies and procedures used to implement the Charter are left to the discretion of the Bank's Board. However, the policies laid out in the Charter about the goals and restrictions of the Bank's credit programs are clear. In accordance with the Charter, a Bank transaction should conform to U.S. law, sanctions, and policy and should be made only if it offers a reasonable assurance of repayment. Additionally, the Bank should be cognizant and considerate of the potential of funding transactions that may impact the environment positively or adversely. Also, any decision made by the Bank should be made with the assistance of appropriate legal counsel.

EXIM Bank has incorporated the requirements of the Charter into its internal policies and procedures, such as its Loan, Guarantee and Insurance Manual (Loan Manual). To ensure that parties to new deals and the deals themselves adhere to U.S. policy, law and sanctions, the Bank's Loan Manual requires that a Character, Reputation, and Transaction Integrity review (CRTI) be conducted on all transactions under consideration for approval. The CRTI requires that the parties to a deal under consideration for approval be checked against numerous databases of sanctioned people, entities, and products in accordance with U.S. export laws and other foreign and domestic U.S. policy.

With respect to the Charter's requirement that EXIM Bank only support financing where there is a reasonable assurance of repayment, the Loan Manual lays out the process for conducting a credit review on all potential commitments. The Bank's credit review process is used to assess the history of credit repayment and overall financial health and potential of the parties that are primarily responsible for repayment of financing for which EXIM Bank support is sought. The Loan Manual sets out guidelines for reviewing the parties' financial reports, credit reports from independent third parties, references and other sources of information relevant to determining the parties' ability and likelihood of repaying credit.

To address environmental review requirements, EXIM Bank's Environmental and Social Due Diligence Procedures and Guidelines (ESPG) outline the procedures the Bank takes with respect to: assessing a transaction's potential environmental impacts; disclosing those impacts in an appropriate and useful manner to the public; and implementing mitigating measures for negative impacts. The ESGP incorporates various international agreements and guidelines that the U.S. is party to or recognizes as well as U.S. domestic laws and regulations.

As per the Charter's requirement to make decisions with the assistance of appropriate legal counsel, the Bank's procedures are detailed in the Loan Manual. On every transaction, the relationship managers or division heads can consult the Bank's Office of General Counsel (OGC). However, for transactions that necessarily encompass complex legal issues, an OGC attorney may be assigned to oversee significant portions of the approval process.

EXIM Bank Transaction Related Activities Prior to the Lapse

EXIM Bank procedures to approve new transactions vary depending on the purpose, size, term, amount and parties to the transaction. Potential new transactions are divided into three categories based on the approval procedures—transactions that require board approval (generally long-term), and medium- and short-term transactions.

To determine whether the 67 transactions were conducted in a manner consistent with the Bank’s Charter and internal policies and procedures, we verified that each transaction had undergone a:

- CRTI review,
- Credit evaluation,
- Environmental screening, and
- Review by counsel.

Further, we determined whether each of the transactions were approved by parties authorized to do so by the Charter or the Bank’s Board (see Table 2 below).

Table 2: Transaction Approval Criteria				
Character, Reputation and Transaction Integrity	Credit Evaluation	Environmental Screening	Review by Counsel	Approval
Were the products exported or the country(ies) exported to prohibited or sanctioned under U.S. law or foreign policy?	Was a credit analysis conducted in-house?	Was the transaction screened to determine whether it would impact the environment beneficially or adversely?	Was counsel made available for consultation in the approval of the transaction?	Was the transaction approved by parties authorized to do so (i.e., the Board, Individual Delegated Authority or Delegated Authority)?

Table 2: Transaction Approval Criteria				
Character, Reputation and Transaction Integrity	Credit Evaluation	Environmental Screening	Review by Counsel	Approval
Were the parties involved listed on any suspension, debarment, or sanctions list?	Was an independent credit report acquired?	Was the transaction of the type that would typically have an environmental impact?	Did counsel provide an opinion or advice?	-
Was a CRTI analysis conducted?	Were the financial risks of the transaction and/or the country of the transaction considered?	-	Did counsel document advice for future reference?	-

Source: EXIM Bank’s Charter and Internal Policies and Procedures

Using the data fields obtained from ERS, we gathered information and reviewed supporting documentation, including memos (board or credit) detailing the reasons for approval, credit reports, fitness reports, guarantee agreements, policy documents, underwriting summaries, application summaries, etc. In addition to our documentary review, we corresponded with various Bank divisions, including OGC, the Engineering and Environment Division, and DMD. We also conducted a series of internal interviews with Bank VPs and employees of the Trade Finance and Business Credit divisions.

EXIM Bank Transaction Related Activities During the Lapse

We identified 28 transactions with authorization dates listed during the lapse on a list of disbursements from ERS provided by the Office of the Chief Financial Officer. Using the data obtained, we were able to gather information on each of the 28 transactions. We interviewed the Director of Audits and Lender Oversight in the Bank’s Business Credit Division who provided supporting documentation for the 28 transactions including applications and loan authorization agreements. We then individually confirmed, via the supporting documentation, that the authorized activity was related to renewal fees on working capital loans that were still active within the bank portfolio.

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