



October 8, 2019

Via Email

James C. Cruse
Senior Vice President
Office of Policy and International Relations
Export-Import Bank
811 Vermont Avenue, NW
Washington, DC 20571
additionality.review@exim.gov

Re: Review of Proposed Guidelines for Assessing Additionality Related to Providing EXIM's Support for Medium and Long Term Export Transactions, Document Number: 2019-19345

Dear Mr. Cruse:

I write on behalf of Americans for Prosperity (“AFP”), a 501(c)(4) nonpartisan organization that drives long-term solutions to the country’s biggest problems.¹ AFP submits these comments in response to the Export-Import Bank’s (“EXIM”) proposed guidelines for determining additionality for transactions with repayment over the medium- or long-term. Additionality is defined as the “existence of reasons why a transaction would not go forward without the Bank’s support,” but, in practice, assessing additionality is not so straightforward. EXIM should increase transparency and minimize ambiguity around assessing additionality and strengthen the evidentiary standard required to establish it.

I. EXIM Should Proactively and Promptly Publish Final Determinations of Additionality

Testifying before the Senate Committee on Banking, Housing, and Urban Affairs this year, EXIM President and Chairman Kimberly Reed writes:

I also am committed to improving EXIM’s transparency to the greatest extent that is practicable without divulging confidential business information. EXIM has made important progress in recent years in the area of transparency, but we always can do more. Greater transparency will increase the confidence of EXIM’s stakeholders that we are pursuing our mission appropriately while protecting taxpayers. As just one part of this commitment, I will seek to improve EXIM’s documentation of its additionality determinations and publish these

¹ See AMERICANS FOR PROSPERITY *About*, www.americansforprosperity.org/about.

determinations so that the bases for these decisions are available to all of our stakeholders.²

As Chairwoman Reed’s words indicate—and which AFP emphasizes—the American taxpayers are vital stakeholders in EXIM’s business. Indeed, the “full faith and credit of the United States” backing EXIM, and underwriting any risk EXIM assumes, are ultimately the faith and credit of the American taxpayers. Accordingly, they deserve to be well informed of EXIM’s decisions.

In line with Chairman Reed’s statement, EXIM should proactively publish board/decision memos on EXIM’s website and do so as promptly as possible once a determination on additionality is made (in addition to the annual reports). In the spirit of the increased transparency EXIM seeks, the memos should include the evidentiary standard used to determine additionality and the evidence provided, save truly confidential or proprietary information. In those cases where the evidence used to assess additionality cannot be published, EXIM should provide a description of the evidence provided.

II. EXIM Should Raise the Minimum Evidentiary Standard to Ensure the Bank is not Competing with Private Capital and is Adequately Managing Risk of Fraud

Additionality is a means by which EXIM ensures it meets its charter requirement to “supplement and encourage, not compete with, private capital.” Lack of additionality is grounds for denying a transaction. Indeed, additionality is a crucial determinant of EXIM engagement, and, presumably, all medium- to long-term transactions on EXIM’s books were found to have additionality.

It seems apparent then, given the importance of additionality to EXIM decision-making, that a fairly rigorous standard of evidence be required to show EXIM engagement on a particular transaction will provide additionality. However, currently, the minimum acceptable standard of supporting evidence in the proposed guidelines is that the “exporter or buyer orally confirms.”³ As the Mercatus Center’s Veronique de Rugy recently explained: “Would your bank let you take out a big loan without any verification just because you check the ‘I need it box’ on the application? This does not show good stewardship of the taxpayer dollars on the line should the Bank’s portfolio go south.”⁴ Surely, such a low standard of evidence leaves EXIM unduly vulnerable to fraud and at risk of unwittingly violating its charter.

² *Oversight and Reauthorization of the Export-Import Bank of the United States, Before the S. Comm. on Banking, Housing, and Urban Affairs*, 116th Cong. (2019) (Written Testimony of Kimberly Reed, President and Chairman, Export-Import Bank of the United States).

³ Export-Import Bank, Review of Proposed Guidelines for Assessing Additionality Related to Providing EXIM’s Support for Medium and Long Term Export Transactions, 84 Fed. Reg. 47288 (Sept. 9, 2019).

⁴ Veronique de Rugy, *Ex-Im “Reform” Documents Look Like More of the Same Crony Capitalism*, The Bridge, Sep. 16, 2019, <http://bit.ly/2mhzWVT>.

A 2013 Audit Report from the EXIM Office of Inspector General (“OIG”) found a “lack of documented support for statements regarding additionality.”⁵ In fact, none of the loans selected for review in the audit “contained documentation sufficient to substantiate applicants’ assertions” regarding additionality.⁶ In 2018, the EXIM OIG published an “Evaluation of EXIM’s Additionality Policies and Procedures,” in which it found the credit files for 26 of the 29 medium- and long-term transactions evaluated did not include any documentation to establish additionality.⁷ In May 2019, the Government Accountability Office (“GAO”) published a report identifying one of EXIM’s greatest risk factors of fraud as being, “opportunities to falsify self-reported information on applications or transaction documents.”⁸

Taken together, the OIG and GAO reports make clear that EXIM’s current minimum standard for evidence to establish additionality—*i.e.*, oral confirmation—is woefully inadequate.

III. EXIM Should Establish an Equitable Process which Offers Domestic Firms Potentially Harmed by Transactions More Opportunity to Challenge

The stated purpose of EXIM transactions is to foster additional exports that otherwise would not occur while also avoiding competing with private capital and other domestic firms. To ensure EXIM is properly executing its mission, the Bank should offer a process that includes input from domestic firms who feel they could be harmed by an EXIM transaction under consideration.

Currently, there is a large gap between the standards to be met by those seeking EXIM support and their domestic competitors who would be harmed by EXIM transactions—with the balance tilted far in favor of those seeking EXIM’s business. A firm applying for EXIM’s support seemingly only needs to “orally confirm” a condition of additionality. Whereas their competitors, who would be placed at a disadvantage, are subjected to more rigorous scrutiny through the economic impact analysis procedures, if even considered at all.

To fulfill its charter, EXIM must account equally for domestic business that would potentially be harmed by EXIM transactions before contracts are executed. The proposed guidelines for establishing additionality apply to medium- and long-term transactions that, by definition, would have lengthy implications. Competitors should not be held to a higher evidentiary standard than those seeking EXIM’s support and their only recourse from harm should not be to seek *post facto* correction or relief.

⁵ Office of Inspector General, Export-Import Bank of the United States, Export-Import Bank’s Management of Direct Loans and Related Challenges, OIG-AR-13-05 (Sept. 26, 2013), *available at* <http://bit.ly/2lQsBwv>.

⁶ *Id.*

⁷ Office of Inspector General, Export-Import Bank of the United States, Evaluation of EXIM’s Additionality Policy and Procedures, OIG-EV-19-01 (November 27, 2018), *available at* <http://bit.ly/2mezr7>.

⁸ Government Accountability Office, Report to Congressional Committees: EXIM Should Explore Using Available Data to Identify Applicants with Delinquent Federal Debt, GAO-19-337 (May 2019), <https://www.gao.gov/assets/700/699291.pdf>.

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If you have any questions about this comment, please contact me by telephone at 202-400-2726 or by email at Thomas.Kimbrell@causeofaction.org. Thank you for your attention to this matter.

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