



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

Report on EXIM Bank's Credit Guarantee Facility Program

*March 30, 2017
OIG-EV-17-03*

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

To: David Sena, Senior Vice President & Chief Financial Officer
Troy Fuhriman, Acting Senior Vice President & Chief Banking Officer

From: Mark Thorum
Assistant Inspector General, Inspections & Evaluations

Subject: Report on EXIM Bank's Credit Guarantee Facility Program

Date: March 30, 2017

Attached please find the final evaluation Report on EXIM Bank's Credit Guarantee Facility Program. The report outlines five recommendations for corrective action. On March 29, 2017, EXIM Bank provided its management response to a draft of this report, agreeing with four of the recommendations and partially agreeing with one recommendation. We consider management's corrective actions to be responsive. The recommendations will be closed upon completion and verification of the implementation of those actions.

We appreciate the courtesies and cooperation extended to us during the evaluation. If you have any questions or comments regarding the report, please contact Mark Thorum at (202) 565-3939 or Jennifer Fain at (202) 565-3439.

cc: Charles J. Hall, Acting President & Chairman and EVP & Chief Operating Officer
Michael McCarthy, Acting Inspector General
Angela Freyre, SVP & General Counsel
James Cruse, SVP, Policy Analysis & International Relations
Inci Tonguch-Murray, Deputy CFO
Madolyn Phillips, Deputy Chief Banking Officer
Annette Maresh, VP, Trade Finance Division
Helene Walsh, VP, Policy Analysis Division
Jennifer Fain, Deputy AIGIE
Lilith Sanchez, Senior Inspector
Parisa Salehi, Counsel, OIG
Lisa Clark, Paralegal

Attachment: Report on EXIM Bank's CGF Program, OIG-EV-17-03, March 2017

EXECUTIVE SUMMARY

Evaluation Report CGF Program
OIG-EV-17-03, March 2017

Why We Did This Evaluation

We completed an evaluation of EXIM Bank's Credit Guarantee Facility (CGF) program. We initiated the review as part of our annual review plan. The primary objective of the Office of Inspector General's (OIG) evaluation was to ascertain the adequacy of the Bank's transaction due diligence, Character, Reputational and Transaction Integrity (CRTI) assessment, post-closing monitoring, and compliance with CGF program policies and procedures. We also sought to confirm that the Bank's reachback policy for the program aligns with the provisions of its Charter.

What We Recommend

OIG recommends that EXIM Bank (1) review and update its policies for conducting credit files reviews; (2) develop, document, and implement spot or scheduled disbursement reviews; (3) require the Guaranteed Lenders for two facilities to address \$5.1 million in goods and progress payments that were not eligible for financing and guarantee; (4) enhance policies to ensure consistent due diligence of proposed amendments as well as a process to review those amendments and determine the appropriate level of approving authority; and (5) review and update the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers.

What We Found

The EXIM Bank CGF program was developed in the early 1980's to enable multiple sales of U.S. exports to a foreign buyer. The program guarantees medium-term loans made under lines of credit issued by a commercial bank to a foreign buyer of goods and services. With a minimum facility size of \$10 million, the CGF has a one year disbursement term, which may be extended if not fully utilized. To facilitate our evaluation, we judgmentally selected five CGF transactions for review, with an aggregate authorized amount of \$960.9 million. To test compliance with the Bank's disbursement requirements, we reviewed 16 disbursements totaling \$97.6 million.

We found that EXIM Bank generally administered the CGF program in accordance with its policies and procedures, streamlined the approval process for disbursements and guarantee issuances, and maintained orderly credit files for each of the five facilities reviewed. However, the independent review of the files was not fully documented. Additionally, our review of disbursements identified instances of non-compliance, resulting in \$5.1 million in shipment of goods and progress payments for services that were not eligible for financing and guarantee under two facilities. Further, although the Bank modified an eligibility date that was material to compliance with Iran sanctions restrictions without consistent due diligence, we found no evidence that this control weakness resulted in a violation of the restrictions.

Finally, we determined that certain CGF transactions refinanced exports that had already occurred years prior to the operative date of the facility, waiving a policy put in place to ensure the program provides additional support for new U.S. exports.

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ABBREVIATIONS AND GLOSSARY

Term	Description
Aeromexico	Aerovias de Mexico, SA de CV. The Aeromexico transaction (AP082367XC) is one of five CGF transactions selected by the OIG for review.
APS	Application Processing System.
Bank or EXIM Bank	Export-Import Bank of the United States.
B/L	Bill of Lading. The B/L (e.g., onboard ocean, truck, airway, and railway) is a document issued by a transportation company (e.g., carrier, freight forwarder) for the shipment of goods. Provided by the transportation company, the B/L lists the type, quantity and destination of the goods and serves as evidence of export.
Board	The Board of Directors, EXIM Bank, is responsible for approving all medium- and long-term transactions over \$10 million.
Board Memo	A memorandum submitted to the EXIM Bank Board as part of the process for approving a transaction for Bank support.
Buyer or Borrower	Foreign buyer of U.S. capital goods and/or services.
CFE	Comission Federal de Electricidad. The CFE transaction (AP087483XX) is one of five CGF transactions selected by the OIG for review.
CGF	Credit Guarantee Facility. A CGF is an EXIM Bank guaranteed line of credit between a guaranteed lender and a foreign bank or a large, foreign, corporate buyer.
CRC	Credit Review and Compliance Division, EXIM Bank.
Credit Administration	A group within the EXIM Bank OMR Division. The Credit Administration group is responsible for the evaluation of requests for utilization under operative loan and guarantee agreements.
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 to a transaction.
EC	Exporter's Certificate. The EC is a document used by EXIM Bank to determine the amount and percent of U.S. content and the financed amount of each invoice. It is completed by the Exporter and contains representations and certifications required by the Bank and the U.S. government. For example, the Exporter attests to the U.S. and foreign content of the goods and services that is provided under a supply contract or signed purchase order with the Purchaser.
ECA	Export Credit Agency. An ECA is a private or quasi-governmental institution that acts as an intermediary between national governments and exporters to issue export financing.
Ecopetrol	Ecopetrol S.A. The Ecopetrol transaction (AP084891XX) is one of five CGF transactions selected by the OIG for review.

Term	Description
ECP	Electronic Compliance Program. The ECP is a web-based certification system utilized by EXIM Bank for the approval of disbursements and issuance of guarantees.
EOL	EXIM Online.
Exporter	An individual or entity in the U.S. that sells goods or services to a purchaser in another country.
Facility Agent	Also known as the “Facility Lender,” provides financing to the Borrower for the purchase and export of U.S. goods and services to the Borrower’s country.
Facility Agreement	An agreement between the Borrower, Lender, and EXIM Bank that sets out the terms and conditions of financing provided to the Borrower for the purchase and export of U.S. goods and services under a CGF.
Facility Guarantee Agreement	An agreement in which EXIM Bank guarantees the Lender’s extension of credit pursuant to the terms and conditions between the Lender and EXIM Bank.
Final Commitment	An authorization of financing by EXIM Bank.
Guaranteed Lender	The Lender that makes credit available to a foreign bank or buyer and EXIM Bank guarantees the repayment of the foreign bank or buyer’s obligations.
GC	Guarantee Certificate. The GC is EXIM Bank’s certificate of guarantee with respect to the disbursements made in accordance with the Facility Agreement. Under the ECP, EXIM Bank electronically documents its disbursement approval and guarantee in the Bank’s EOL system that is accessible to the lender.
Guarantor	The Guarantor guarantees to the Lender and EXIM Bank the payment of principal and interest on the facility when due, including any additional amounts payable under the Facility Agreement or each Note.
ISP	Itemized Statement of Payments. The ISP form is completed by the Borrower (or Purchasing Agent) and lists information obtained from the standard documents required as support for a disbursement (e.g., invoice no., date of payment, and amount; B/L no. and date, etc.).
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.
MI	Master Invoice. The MI is a document completed and executed by the Exporter as an alternative to submitting individual Exporter invoices under a modified disbursement documents process. The document lists all of the invoices for an Exporter, including the purchaser reference no., invoice no. and date, description of goods/services, period (services), invoice amount and the amount paid.
NIOC	National Iranian Oil Company.
OCP	OCP S.A. The OCP transaction (AP088270XX) is one of five transactions selected by the OIG for review.
OIG	Office of Inspector General, EXIM Bank.

Term	Description
OMR	Operations and Management Reporting Division, EXIM Bank
Operative Date	The Operative Date is the date that EXIM Bank advises the lender that all conditions precedent (i.e., all conditions and agreements) for the transaction are satisfied and the transaction is available for funding.
Petrobras	Petrobras Brasilia, S.A. and Petrobras Netherlands, BV (collectively, Petrobras). The Petrobras transaction (AP084193XX) is one of five transactions selected by the OIG for review.
Purchasing Agent	Person or entity whose primary goal is to locate suppliers and to negotiate the best price without sacrificing quality for the goods and services needed by the organization it represents.
Reachback	The term reachback is used to describe the amount of time passed between the shipment of U.S. exports and the receipt of the final commitment or application for loans, guarantees and medium-term insurance by EXIM Bank for financing. For CGF's, goods shipped or services performed that occurred up to 180 days prior to the operative date of the transaction are allowable for financing under the Bank's reachback policy.
RGS	Record of Goods and Services. The RGS is a document completed by the Borrower (or Purchasing Agent) as an alternative to submitting B/Ls under a modified disbursement documents process. The form lists all of the MIs for a disbursement including the MI nos., Exporters, invoice nos., description of goods/services, B/L nos. and dates, and remarks. If available, the North American Industry Classification System (NAICS) Code is to be listed.
TD	Transportation Division, EXIM Bank.
TFD	Trade Finance Division, EXIM Bank.
Utilization	The Borrower's usage of a credit facility (e.g., CGF).

EVALUATION REPORT ON EXIM BANK’S CGF PROGRAM

INTRODUCTION

We completed an evaluation of the Export-Import Bank of the United States (EXIM Bank or Bank) Credit Guarantee Facility (CGF) program. We initiated the review as part of our annual review plan. The primary objective of the Office of Inspector General’s (OIG) evaluation was to ascertain the adequacy of the Bank’s transaction due diligence, Character, Reputational and Transaction Integrity (CRTI) assessment, post-closing monitoring, and compliance with the policies and procedures related to the CGF program. In addition, we sought to confirm that the Bank’s reachback policy for the program aligns with the provisions of its Charter.

SCOPE AND METHODOLOGY

To achieve our objective, a combination of quantitative and qualitative techniques, as well as document reviews, was employed as part of the evaluation of EXIM Bank’s CGF program. We judgmentally selected five CGFs for review, with a total authorized amount of \$960.9 million, and total exposure amount of \$239.3 million as of September 30, 2016 to test compliance with the Bank’s policies and procedures. The five facilities were authorized by the Bank during fiscal years 2010 to 2015. To test compliance with the Bank’s disbursement requirements for the five CGFs, we reviewed a judgmental sample of 16 disbursements, totaling \$97.6 million. See Appendixes B and C for a list of transactions and disbursements reviewed, and the related narratives.

For the selected facilities, we reviewed applicable legal documents and related internal Bank reports and correspondence; interviewed Bank management and staff including representatives from two facility agents and a purchasing agent; reviewed disbursement requests, supporting schedules (e.g., itemized statements of payment), and standard documents required as support for disbursements (i.e., invoices, evidence of payment, evidence of export, and Exporter’s Certificate); and reviewed public and open source documents.

To facilitate the evaluation, OIG engaged the services of CliftonLarsonAllen (CLA) through contract to review the Bank’s policies and procedures for the CGF program and the credit files and related documents for the five facilities. CLA also participated in interviews of Bank staff and management. The results of their work have been incorporated into this report. The evaluation was performed primarily at EXIM Bank’s main location in Washington, DC, with fieldwork conducted at the locations of facility agents and lenders in Charlotte, NC and New York, NY, and a purchasing agent in Houston, TX.

Points of Inquiry

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

POINT OF INQUIRY 1: Did EXIM Bank administer the CGF program in compliance with established policies and procedures?

POINT OF INQUIRY 2: Is the use of a reachback option for CGFs consistent with EXIM Bank’s mission to create and sustain U.S. jobs through the financing of U.S. exports?

The OIG conducted this evaluation during fiscal years 2016-2017 in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of Inspectors General on Integrity and Efficiency.¹ 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

BACKGROUND

Established in 1934 through Executive Order, and subsequently made an independent agency of the United States (U.S.) through congressional Charter in 1945, EXIM Bank is a wholly-owned government corporation whose fundamental mission is to aid in the financing and to facilitate the export of U.S. goods and services, and to contribute to the employment of U.S. workers. EXIM Bank’s Charter, through its enabling legislation, establishes the Bank’s operations and programs and is reauthorized on a periodic basis. With the passage of the *Export-Import Bank Reform and Reauthorization Act of 2015*, the authorization of the Bank’s Charter was extended through September 30, 2019.²

The Bank’s core financing programs include direct loans and guarantees to foreign buyers, export credit insurance for exporters and foreign buyers, and working capital finance to U.S. small business exporters. The Charter requires “reasonable assurance of repayment” for all Bank transactions, which are backed by the full faith and credit of the U.S. Government.³ EXIM Bank has functioned on a self-sustaining basis since fiscal year 2008, covering its operational costs and provisioning for expected losses through loan loss reserves, funded by fees and interest it charges its customers.⁴

Credit Guaranty Facility Program

The CGF program was developed by EXIM Bank in the early 1980’s to enable multiple sales of U.S. goods and services to a foreign buyer. Unlike traditional medium- and long-term export financings, CGFs are considered general lines of credit to be used by the foreign buyer in the ordinary course of business. The lines of credit are made available through

¹ For more information on the *Quality Standards of Inspection and Evaluation*, see <https://www.ignet.gov/sites/default/files/files/committees/inspect-eval/iestds12r.pdf>.

² 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>.

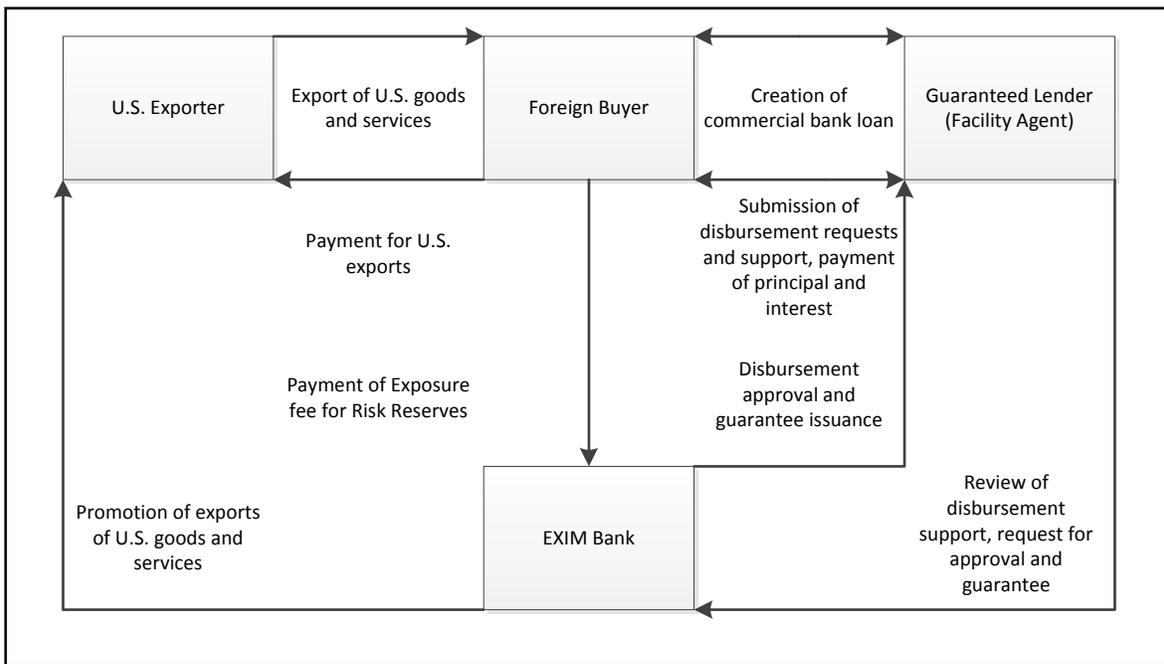
³ See *The Charter of the Export-Import Bank of the United States* at http://www.exim.gov/sites/default/files/2015_Charter_-_Final_As_Codified_-_02-29-2016.pdf.

⁴ See the *Export-Import Bank of the United States Annual Report 2015* at <http://www.exim.gov/sites/default/files/reports/annual/EXIM-2015-AR.pdf>.

commercial lenders for the purchase of U.S. exports during a one year disbursement period and may be extended if not fully utilized.⁵ CGFs are classified as medium-term with repayment terms of up to five years, or seven years on an exception basis. With a minimum facility size of \$10 million, CGFs have the same coverage as other EXIM Bank medium- and long-term guarantees—100 percent unconditional guarantee to the lender of principal and interest for up to 85 percent financing, with 15 percent cash down payment and any financed fees. See figure 1 below for an illustration of the loan guarantee structure.

A unique element of a CGF is that the specific goods or services are not defined at the time of application but are expected to have a useful life consistent with the two- to five-year expected repayment term of the underlying loans. Further, neither the facility nor the subtransactions are subject to a review by the Bank’s Engineering and Environmental Division unless specifically requested by the Loan Officer or Credit Administrator during the underwriting of the facility and disbursement approval process.⁶ The individual disbursements for a CGF cannot exceed \$10 million, excluding the exposure fee, if financed.

Figure 1: EXIM Bank Loan Guarantee Structure



Source: EXIM Bank Loan Manual

⁵ If not fully utilized, CGFs may be renewed by the Bank (i.e., lower of 50 percent of the authorized value or \$10 million of the facility has been utilized).

⁶ For example, the Borrower requests a 7-year repayment term. A Loan Officer requests the assistance of an Engineer to determine the useful life of the products to be financed.

The initial eligibility date for U.S. exports to be covered under a CGF is 180 days prior to the “operative date” of the facility.⁷ This practice is referred to as a “reachback,” where goods shipped or services rendered to the Borrower before the transaction becomes operative are eligible for financing. CGFs are charged a flat 1/16th of one percent per annum facility fee on the financed portion of the facility plus an exposure fee.⁸ Lenders must have adequate experience in dealing with similar EXIM Bank programs and adequate capital and infrastructure to handle the disbursement documentation requirements. See Appendix D for lender eligibility requirements.

Within EXIM Bank, the CGF program is administered by the Trade Finance Division (TFD). TFD has primary responsibility for the underwriting of CGFs and the processing of amendments while a facility remains operative.⁹ The Bank’s Transportation Division (TD) is responsible for underwriting and processing amendments for transportation-related CGFs. Application intake and initial input into the Bank’s Application Processing System (APS) and disbursement processing is accomplished by the Operations and Management Reporting Division (OMR). As of September 30, 2016, the total outstanding balance and exposure of loans guaranteed under the CGF program was \$163.0 million and \$239.3 million, respectively.¹⁰

Underwriting

CGF underwriting procedures are determined by the transaction financed amount. The procedures for a facility with a financed amount of \$10 million excluding the exposure fee are similar to that of other EXIM Bank medium-term transactions that can be approved by a Bank officer with Individual Delegated Authority (e.g., a Credit memo is prepared).¹¹ A CGF with a financed amount greater than \$10 million is subject to the procedures similar to that of long-term transactions that require approval by EXIM Bank’s Board of Directors (e.g., a Board Memo is prepared).

The current system for underwriting CGFs is largely manual and paper-based, although efforts are underway by the Bank to modify EXIM Online (EOL) to be able to accommodate

⁷ For CGFs, the “operative date” is the reference point for the reachback policy. The starting point of a credit, which the Bank defines as “the date from which cover takes effect on a given export credit transaction and the basis upon which the repayment term calculation and premia begins” is each consolidation date for CGFs. EXIM Bank Policy Handbook, dated June 2005. The operative date is also the date used to determine eligible shipments, the period of disbursement and the final utilization date of the facility. The starting point of credit for medium-and long-term credits depends on the nature of the transaction.

⁸ In addition to the facility fee, an Aviation Sector Understanding (ASU) guarantee commitment fee is charged for aircraft related CGFs.

⁹ For non-transportation related CGFs, EXIM Bank’s Asset Management Division is responsible for processing of amendments relating to defaults or reschedulings, and any amendments post-expiry of a facility.

¹⁰ The total exposure amount is the total outstanding balance plus the total amount undisbursed for loans guaranteed under the CGF program.

¹¹ EXIM Bank Individual Delegated Authority, Board Resolution as of July 26, 2010.

CGF applications.¹² Currently, the Bank’s APS is used to enter and track the list of exporters and create the cover pages of the Board Memo for facilities that require board approval.

Beginning in October 2011, EXIM Bank required CGF applicants to submit two lists as part of the application process: (1) a preliminary product list of goods and services; and (2) a comprehensive list of exporters to be utilized under the facility. The lists allow Bank staff to perform the minimum required prescreening, such as the CRTI check of exporter, supplier, and borrower names and Iran sanctions due diligence for activities and persons subject to sanctions. The EXIM Bank Loan Officer develops a list of prequalified names that are then entered into APS by OMR. Prior to utilization of the facility, the Borrower is required to submit to the Bank a formal list of exporters, which may be updated, for approval by the Loan Officer.

Disbursements

Under the CGF program, disbursements are limited to reimbursements and direct disbursements. Reimbursements arise when the Borrower has previously paid the U.S. exporter for goods and services and the Guaranteed Lender reimburses the Borrower for the financed amount. Direct disbursements are payments made by the Guaranteed Lender directly to the U.S. exporter for the financed portion of goods and services purchased by the Borrower. Table 1 below describes the Bank’s manual disbursement approval and Electronic Compliance Program (ECP) request for disbursement approval processes.¹³ In June 2011, the EXIM Bank Board approved the use of the ECP for CGFs, which was implemented in November 2013. In October 2012, the audit responsibility for CGFs was transferred from OMR to the Bank’s Credit Compliance and Review Division (CRC).

Table 1: EXIM Bank Disbursement Methodology	
Manual Approval	ECP Approval
Lender receives and reviews the disbursement documents	Lender receives, reviews and retains the disbursement documents
Lender makes payment against the documents either to the Borrower or the Exporter	Lender makes payment against the documents either to the Borrower or the Exporter
Lender submits the disbursement request and all disbursement documents to EXIM Bank	Lender submits the disbursement request and electronic checklist summarizing its review of the disbursement documents
EXIM Bank OMR Credit Administration staff review the disbursement documents	After a review of the checklist, EXIM Bank electronically approves the disbursement
EXIM Bank approves the disbursement and issues a guarantee certificate or legends the promissory note(s)	EXIM Bank randomly “audits” ECP disbursements for compliance

Source: EXIM Bank Amendment Request for Ecopetrol CGF (March 17, 2011)

¹² EOL, an automated application processing system, is utilized by the Bank for processing applications for short- and medium-term loans and guarantees.

¹³ In 2001, the Bank developed ECP “to improve the efficiency and turnaround time in approving medium-term disbursements under medium-term Master Guarantee Agreements.”

Historically, the Bank has required all documentation supporting CGF disbursements to be submitted for manual review and approval by the assigned Credit Administrator in OMR prior to the issuance of a Guarantee Certificate or legend on a promissory note. However, under the ECP, the Bank relies on the Guaranteed Lender to collect and review the required disbursement documentation, verifying that the Exporter is on the Bank’s pre-approved Exporter list and that the goods and services included in a disbursement request are not excluded from financing.¹⁴

The Guaranteed Lender submits disbursement requests and required information to the Bank by completing the online ECP Request for Disbursement Approval form.¹⁵ The Credit Administrator reviews the form and documents the approval and guarantee electronically in the Bank’s EXIM Online (EOL) system that is accessible by the lender. CRC evaluates the lender’s compliance with ECP program requirements through random post-disbursement reviews.

Among the five CGFs reviewed, two facilities (Petrobras and Ecopetrol) were subject to the manual approval process; however, a modified disbursement documentation methodology was approved for one facility (Petrobras). The remaining three CGFs (CFE, OCP and Aeromexico) were processed under the ECP approval process. The standard documents required as support for a disbursement include the U.S. invoice, evidence of payment, bill of lading, and Exporter’s Certificate.¹⁶

Prior Reviews of EXIM Bank’s CGF Program

This is the first evaluation of EXIM Bank’s CGF program by the OIG. Prior to this evaluation, the Government Accountability Office (GAO) conducted a performance audit of the Bank’s loan guarantee underwriting procedures.¹⁷ The objectives of the audit were to examine the extent to which the Bank (1) adequately designed and implemented procedures to reasonably assure compliance with its underwriting process requirements for loan guarantee transactions and consistency with federal guidance, and (2) adequately designed procedures to prevent, detect, and investigate fraudulent applications for loan guarantees. While the audit was not specific to the CGF program, it identified opportunities for improvement in the Bank’s processes for underwriting loan guarantees and documenting fraud and included six recommendations. For example, GAO recommended that the Bank should “develop and implement detailed instructions, prior to loan guarantee approval, for

¹⁴ See Appendix E for details on the documents to be submitted for disbursement requests and approval and retention requirements.

¹⁵ The ECP Request for Disbursement Approval form includes summary information (e.g., transaction, contact and disbursement), certifications in the form of yes/no questions, and Exporter/Local Cost Provider invoice information.

¹⁶ *Supra* note 14.

¹⁷ For more information, see GAO’s *Export-Import Bank: Enhancements Needed in Loan Guarantee Underwriting Procedures and for Documenting Fraud Processes* (GAO-14-574, dated September 9, 2014) audit report available at <http://www.gao.gov/assets/670/665621.pdf>.

... preparing and including all required documents or analyses in the loan file....” All six of the recommendations made by GAO are closed.

PRINCIPAL FINDINGS AND RECOMMENDATIONS

Point of Inquiry 1: Did EXIM Bank administer the CGF program in compliance with established policies and procedures?

Applicable Standards, Terms and Conditions

OIG reviewed various Applicable Standards, Terms and Conditions and focused on the following:

1. Procedures for processing applications and waivers for and documenting CGFs outlined in Chapters 7 and 12 *Credit Guarantee Facilities* of EXIM Bank's Loan, Guarantee and Insurance Manual (Loan Manual), dated January 2010 and April 2015, respectively;
2. Policy and rationale for CGFs outlined in the *Credit Guarantee Facilities* section of the Bank's Guarantee Program: Technical Handbook (Guarantee Handbook), dated October 1995;
3. Policy for *Additionality* and *Reachback* outlined in the Bank's Policy Handbook (Policy Handbook), dated June 2005;
4. Procedures for processing disbursements for CGFs outlined in the Bank's *Operations and Data Quality Division Manual, Credit Administration: Guarantees and Loans* (Disbursements Manual), Updated through August 2010 and January 2016, respectively;
5. EXIM Bank's *Frequently Asked Questions for Loans and Guarantees* (FAQs);¹⁸
6. Authority delegated to senior Bank officials by the Board outlined in the *Individual Delegated Authority Board Resolution* as of July 26, 2010;¹⁹
7. Terms and conditions of the Facility Agreements and Facility Guarantee Agreements for the five judgmentally selected CGF transactions; and
8. Federal guidance on internal controls and policies for credit programs outlined in the General Accountability Office's (GAO's) *Standards for Internal Controls for the Federal Government* and the Office of Management and Budget's (OMB) Circular A-123, *Management's Responsibility for Internal Controls* and Circular A-129, *Policies for Policies for Federal Credit Programs and Non-Tax Receivables*.

EXIM Bank Policies, Procedures and Guidance

The basic features, processing and underwriting requirements of the CGF program are outlined in EXIM Bank's Loan Manual, last revised in April 2015. Other elements of the

¹⁸ For more information, see "Credit Administration Fact Sheets" at <http://www.exim.gov/tools-for-exporters/credit-administration-and-operations>. The Bank has FAQs for Invoices, Evidence of Payment, Evidence of Export and Exporter's Certificate.

¹⁹ *Supra* note 11.

program are outlined in the Bank’s Guarantee Handbook, which defines the CGF program parameters and rationale. Additional guidance can be found in the Bank’s Policy Handbook, Disbursements Manual, on-line FAQs for loans and guarantees, and Individual Delegated Authority policy.

The terms and conditions specific to each CGF are outlined in the Facility Agreement between the Borrower, the Lender, and EXIM Bank. The Facility Agreement, for example, includes a schedule or annex that lists the goods and services that are excluded from Bank financing,²⁰ inspection rights, and the required disbursement documents and related forms. The terms and conditions of the EXIM Bank guarantee are outlined in the Facility Guaranty Agreement.²¹

Federal Guidance on Internal Controls and Policies for Credit Programs

As prescribed in OMB Circular A-123, *Management’s Responsibility for Internal Control*, EXIM Bank management has a “fundamental responsibility to develop and maintain effective internal control.”²² Internal control is a process effected by EXIM Bank’s Board of Directors and management, designed to provide reasonable assurance about the achievement of the Bank’s mission and objectives in regard to effectiveness and efficiency of operations, reliability of financial reporting, and compliance with laws and regulations. As stated in the GAO’s *Standards for Internal Control in the Federal Government*, “control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.”²³

Management is responsible for designing control activities to achieve an entity’s objectives and to respond to risks in its internal control system. A common control activity identified in the GAO standards is “appropriate documentation of transactions and internal control.”²⁴ Specifically, the standards states that, “Management clearly documents internal control and all transactions and other significant events in a manner that allows the document to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.”²⁵ Both the OMB

²⁰ EXIM Bank developed the Excluded Goods and Services List to distinguish between goods or services that require a special review versus those that do not. It is a list of items that would require additional review and consideration by the Bank (e.g., by an Engineer) and therefore are excluded from financing under a CGF.

²¹ Unlike other Bank medium-term guarantee products, CGFs are not subject to a Master Guarantee Agreement.

²² For more information, see https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a123/a123_rev.pdf and <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-17.pdf>.

²³ For more information, see <http://www.gao.gov/assets/80/76455.pdf> and <http://www.gao.gov/assets/670/665712.pdf>.

²⁴ Ibid.

²⁵ Ibid.

Circular A-123 and GAO standards prescribe separate and ongoing evaluations of internal control activities as part of monitoring by federal agencies.

OMB Circular A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*, requires departments and agencies to “[o]perate each credit program under a robust management and oversight structure, with clear and accountable lines of authority and responsibilities for administering programs and independent risk management functions; monitoring programs in terms of programmatic goals and performance within acceptable risk thresholds; and taking action to improve or maintain efficiency and effectiveness.”²⁶

Finding 1: Although EXIM Bank generally administered the CGF program in accordance with program policies and procedures, we identified certain control weaknesses.

Overall, EXIM Bank administered the CGF program in accordance with its program policies and procedures. In reviewing our judgmental sample of five facilities, OIG found that the Bank followed the proper procedures for processing and underwriting CGFs as outlined in EXIM Bank’s Loan Manual. In addition, the Bank has streamlined the approval process for disbursements and guarantee issuances by implementing the Electronic Compliance Program (ECP) for CGFs in November 2013, significantly enhancing the efficiency of the program.²⁷ However, as detailed in the findings below, we identified certain control weaknesses.

Finding 1A: Credit files were reasonably complete and orderly, but independent review of the files was not fully documented.

EXIM Bank’s credit files for the five CGFs were found to be reasonably complete and orderly, with only two unsigned documents identified that were subsequently located and provided by the Bank. However, our review found that the Bank should enhance its controls over the completeness and integrity of the credit files. The extent to which someone independent of the Loan Officer reviewed the credit files, or that the credit files were examined specifically for completeness and compliance, was unclear for the five facilities.

Section 7.2.2.1 of the Bank’s Loan Manual addresses the policies for credit file review and emphasizes the importance of “good file maintenance” by the Loan Officer. To this end, the Bank’s policy requires Loan Officers to include and periodically update a document and compliance checklist (e.g., AP Document Checklist and Compliance Checklist) in the credit file. The checklists are intended to ensure the completeness of the file for board approval.

²⁶ For more information, see https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/a129/rev_2013/pdf/a-129_main.pdf.

²⁷ The ECP is a web-based certification system for disbursement approval and guarantee issuance that had been used for a number of years for other standard medium-term and some smaller long-term guarantees.

As documents are completed and placed in the file, the Loan Officer or responsible party initials and dates the applicable line on the checklist.

The Bank's policy places responsibility for reviewing the integrity of the file with the division Vice President, who also initials the Board Memo approving the transaction. Without a fully documented independent review of the credit file, the Bank cannot provide assurance that all application processing, prescreening and due diligence was completed in accordance with Bank policies and procedures.

Finding 1B: Approval of disbursements and issuance of guarantees generally complied with EXIM Bank policies and procedures, but we identified some instances of noncompliance resulting in goods and services that were not eligible for financing and guarantee.

We reviewed compliance with the process for approving disbursements and issuing guarantees for the CGF program. For five facilities, we reviewed a judgmental sample of 16 disbursements totaling \$97.6 million and conducted on-site reviews at two Facility Agents and a Purchasing Agent. We determined that the disbursements were completed in accordance with the respective disbursement approval process (i.e., manual or ECP). The Facility Agents submitted the required documents and information to the Bank for approval and the disbursement files reviewed were reasonably complete and orderly.²⁸

However, as illustrated below, we identified some instances of noncompliance where disbursement files maintained by the Facility Agents and/or Purchasing Agent were not readily available for examination as documentation was missing or goods or services that were not eligible for financing and guarantee occurred. We also noted other minor errors (e.g., transposition of numbers and incorrect dates) in our review of disbursement documentation. However, these errors did not affect the amount being financed and guaranteed. See Appendix F for a summary of the results of the disbursement testing.

Petrobras Brasilia, S.A. and Petrobras Netherlands, BV (collectively, Petrobras).

Disbursements were approved manually under a modified process with respect to the submission of the standard documents required as support for disbursements. Under the modified process, Petrobras submitted to the Facility Agent a Master Invoice and Record of Goods and Services instead of invoices and bills of lading for each disbursement for review. Petrobras was required to maintain the supporting invoices and bills of lading for a period of 10 years from the date of request for reimbursement.²⁹

²⁸ *Supra* note 15.

²⁹ According to EXIM Bank staff, the Guaranteed Lender for the Petrobras CGF did not have a records retention requirement because it had submitted the required documents to the Bank. Specifically, for each subtransaction, the lender submitted the Reimbursement Request, Itemized Statement of Payment, Exporter's Certificate, Master Invoice, Records of Goods and Services and Evidence of Payment (see Appendix E).

We tested five disbursements under the Petrobras facility, totaling \$29.5 million, and conducted on-site reviews of the Facility Agent and the Purchasing Agent. We determined that the disbursement files maintained by the Facility Agent were reasonably complete and orderly. However, we found that the files maintained by the Purchasing Agent for the disbursements tested were not readily available for examination as documents were missing. The Purchasing Agent was able to locate some missing invoices and bills of lading in its electronic record keeping system and indicated that the remaining documents may be stored off-site. Petrobras made its final payment on the facility on February 16, 2016.

Commission Federal de Electricidad (CFE). Disbursements were approved and guaranteed electronically via the ECP. CFE was required to submit the standard documents to the Facility Agent for review.

We tested three disbursements under the CFE facility, totaling \$17.4 million, and conducted an on-site review of the Facility Agent. We determined that the disbursement files maintained by the Facility Agent were reasonably complete and orderly. CFE submitted the required standard documents to the Facility Agent and information reported to EXIM Bank on the ECP Request for Disbursement Approval forms agreed with the documents submitted by CFE. However, for the first disbursement, we determined that the Facility Agent financed and EXIM Bank guaranteed \$3.6 million in goods that were shipped to the Borrower prior to the approved initial eligibility date of September 30, 2012.

OCP S.A. (OCP). To date there have only been two disbursements under the facility, totaling \$15.9 million. The disbursements were approved and guaranteed electronically via the ECP. OCP was required to submit the standard documents to the Facility Agent for review.

We reviewed both OCP disbursements and found that the Borrower submitted the required standard documents to the Facility Agent and the information reported to EXIM Bank on the ECP Request for Disbursement Approval forms generally agreed with the documents submitted by OCP. However, for the first disbursement, we determined that the Facility Agent financed and EXIM Bank guaranteed \$1.5 million in progress payments for services that occurred prior to the approved initial eligibility date of March 1, 2013.³⁰ In response to a request for further details on the goods and services covered by the disbursement, Bank staff stated that they relied on the lender to verify that the documents complied with the Bank's disbursement procedures. EXIM Bank has since received invoices from OCP totaling \$1.7 million to serve as replacement for the \$1.5 million progress payments for services that were not eligible for financing and guarantee.

Had EXIM Bank conducted a review (e.g., spot-check or scheduled review) of the disbursements discussed above, in particular for the Petrobras CGF which was fully disbursed as of August 19, 2011, the instances of noncompliance could have been identified

³⁰ Five invoices totaling \$9.4 million were dated and paid prior to the March 1, 2013 initial eligibility date approved and confirmed by EXIM Bank. A progress payment of \$5.4 million was invoiced and paid in June 2012. Progress payments totaling \$4 million were invoiced in September 2012 and paid in December 2012.

and addressed in a timelier manner.³¹ According to the Purchasing Agent for Petrobras, EXIM Bank had reviewed 100 percent of disbursements of a prior CGF for compliance with the Bank's disbursement requirements post-expiry of the facility. This allowed for earlier identification and correction of errors (e.g. substitution of eligible invoices). Without a review, the Bank cannot ensure the accuracy of or attest to the appropriateness of disbursements financed and guaranteed under the program.

The need for a review of disbursements is particularly relevant for the CGF program as the transactions provide less visibility than other export finance programs as to the exact nature of the goods and services financed.³² As EXIM Bank serves as the Guarantor, it relies more on the Guaranteed Lender to ensure that the goods and services meet program requirements. This reliance increases the Bank's reputational risk and operational risk should a prohibited item be shipped or goods were shipped to a prohibited country, or a fraudulent event occurs.

To help mitigate the above risks, the Bank requires a preliminary list of goods and services and exporters for CGFs. Bank staff then conduct a full CRTI analysis on the various entities. Further, participation in the ECP subjects lenders to random reviews of the disbursement documents by EXIM Bank's CRC. However, to date, the CRC has not conducted a review of CGF program disbursements. The division planned to conduct a post-disbursement review, but the low volume of disbursements processed via the ECP thus far did not meet the materiality threshold of \$250 million set by the Bank to initiate a review of the program. This approach limited the Bank's monitoring of disbursements under the CGF program and the timely identification and resolution of the compliance issues outlined above. Now that the OCP CGF is operative and disbursing, Bank staff indicated that the materiality threshold will be met and a post-disbursement review of the CGF program will be conducted.

Finding 1C: EXIM Bank modified an eligibility date that was material to compliance with Iran sanctions restrictions without consistent due diligence, but we found no evidence that this control weakness resulted in a violation of the restrictions.

In reviewing the credit file for the Petrobras CGF, we found that EXIM Bank modified the terms of its standard reachback policy to set the initial eligibility date for financing under the facility as July 15, 2009 (first waiver)—a date after a Petrobras contract with the National Iranian Oil Company (NIOC) had ended and in compliance with restrictions on providing funding to businesses involved in Iranian oil production. Subsequently, Bank staff approved a second waiver extending the eligibility period back to January 1, 2009, but did not conduct consistent due diligence to assess the implications of this change on Iran-related restrictions. We conducted additional review to determine whether the expansion of the eligibility time period resulted in financing of impermissible transactions and did not

³¹ On August 19, 2011, the Guaranteed Lender disbursed to Petrobras the \$300.5 million. Petrobras made its final payment of \$22.1 million to the Guarantee Lender on February 16, 2016.

³² EXIM Bank Amendment Request for Ecopetrol CGF dated March 17, 2011.

identify any evidence of improper financing. However, the failure to conduct due diligence was a control weakness that could have resulted in violation of Iran-related restrictions.

Iran restrictions. On December 16, 2009, the Consolidated Appropriations Act, 2010 (the “Act”) became law.³³ In addition to appropriating funds, the Act prohibited EXIM Bank from authorizing “any new guarantee, insurance or extension of credit for any project controlled by an energy producer or refiner” that continues to engage in specified activities with Iran. The specified activities include, for example, “allow[ing] Iran to maintain or expand, in any material respect, its domestic production of refined petroleum resources”

An internal memorandum to Bank staff provided guidance on interim procedures to comply with the Act’s restrictions, as applicable for new transactions.³⁴ For example, the interim procedures required the addition of a notification in the Commitment Letter that “EXIM Bank’s authorization was contingent upon the legal documentation including a representation that none of the parties involved is a Prohibited Energy Producer/Refiner with control over the transaction.” The interim procedures directed Bank staff to “continue to maintain a heightened sensitivity to any connection with parties involved with Iran for all transactions” and stated that further guidance would be provided. However, we did not find any further guidance issued by the Bank.

The Export-Import Bank Reauthorization Act of 2012 (the “Reauthorization Act”) amended EXIM Bank’s Charter to include the prohibition on Bank financing outlined in the Consolidated Appropriations Act, 2010.³⁵ Section 18 of the Reauthorization Act prohibits the Bank’s Board from approving any transaction to a person in connection with the export of any goods or services is (1) involved in certain sanctionable activities with respect to Iran unless they certify as described, or (2) subject to sanctions under the Iran Sanctions Act of 1996, as amended.³⁶ In addition, EXIM Bank revised its policies and procedures to ensure Bank staff carries out the due diligence process in accordance with the Iran-sanctions provisions of the Reauthorization Act (e.g., required certifications, due diligence, and provisions in the credit documentation).³⁷

³³ For more information, see <https://www.gpo.gov/fdsys/pkg/PLAW-111publ117/pdf/PLAW-111publ117.pdf>.

³⁴ EXIM Bank Memorandum dated January 26, 2010.

³⁵ The Reauthorization Act became law on May 30, 2012, with section 18 becoming effective 180 days after enactment. For more information, see <https://www.gpo.gov/fdsys/pkg/PLAW-112publ122/pdf/PLAW-112publ122.pdf>.

³⁶ EXIM Bank defines a “person” to be “(i) a natural person; (ii) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and (iii) any successor to any entity described in clause (ii). The term ‘person’ does not include a government or governmental entity that is not operating as a business enterprise.” EXIM Bank Iran Activities Certification and Iran Sanctions Sanctioned Persons-Certification forms. For more information, see <http://www.exim.gov/policies/iran-sanctions>.

³⁷ Ibid.

Petrobras transaction. The Petrobras CGF was approved by the Bank’s Board on February 4, 2010 for \$308.2 million. Pursuant to the 2010 Act’s requirements, the Bank’s credit file for the facility contained information to support due diligence conducted by the Bank on Petrobras’ business dealings with Iran. Prior to the Board meeting approving the facility, EXIM Bank conducted due diligence regarding compliance with Iran financing restrictions and determined that Petrobras had a contract with NIOC, but that this contract had expired on July 13, 2009. In addition, Petrobras certified that it was no longer engaged in business with Iran.

The Board’s approval of the facility was “contingent upon a legal representation in the transaction documentation that none of the parties involved is a prohibited energy producer/refiner with control over the transaction, as a result, EXIM Bank’s participation does not violate the Consolidated Appropriations Act, 2010.”³⁸ Further, the Board approved the transaction with the understanding that “by Petrobras’ written communication and also by our own investigations that Petrobras had ceased its material business dealings with Iran—thus mitigating this potential concern.” Finally, the Board Memo provided that the facility would “include the standard ‘reach-back’ period of up to six (6) months prior to the date eligible for each disbursement, with the initial eligible reach-back date of six months from the date that the CGF is made operative.”

According to a memorandum to file, Bank management based its decision to approve the first waiver to extend the initial eligibility date to July 15, 2009 on confirmation received from Petrobras that its contract with the NIOC had expired on July 13, 2009.³⁹

In July 2011, Petrobras submitted a second waiver request to the Bank to extend the initial eligibility date to January 1, 2009. Earlier emails in the credit file stated that Petrobras claimed there would be “operational impacts” and that it would lose an estimated \$150 million in financing without the waiver. EXIM Bank initially responded to Petrobras’ requests that the July 15, 2009 reachback date was “firm and not negotiable.” The Bank later made the decision to grant the waiver to extend the initial eligibility date to January 1, 2009 subject to a reduced tenor (i.e., 5-year repayment terms to 3- and 4-year terms) and cover in accordance with Organisation for Economic Co-operation and Development (OECD) guidelines for the starting point of credit.⁴⁰

However, we found that EXIM Bank did not observe the same due diligence process when approving the second waiver to extend the initial eligibility date to January 1, 2009. The Petrobras credit file did not contain information to explain why the change in the eligibility date was justified (i.e., why the termination of the NIOC contract was no longer a material concern), or any analysis of the implications of the date change on compliance with Iran

³⁸ EXIM Bank Memorandum to the Board of Directors, dated January 27, 2010.

³⁹ EXIM Bank Memorandum to File, dated July 7, 2010, and Petrobras Letter, dated December 15, 2009.

⁴⁰ The OECD Arrangement on Officially Supported Export Credits requires that the principal and interest on a credit be repaid no less than every six months, with the first payment being made no later than six months after the starting point of the credit. For more information, see <http://www.oecd.org/tad/xcred/theexportcreditsarrangementtext.htm>.

restrictions. Moreover, the Office of General Counsel stated that it was not consulted regarding the second waiver.

Absent a complete record of the deliberative process (i.e., information considered, discussions held, decisions made) used to determine whether to approve the waiver, the Bank did not have reasonable assurance of compliance with Iran restrictions for the invoices from the time period between January 1 and July 14, 2009, a time period which previous due diligence had found the Borrower had some involvement with Iranian business. Further, the lack of a complete record makes it difficult to discern the basis for the decision made by the Bank. Finally, the material nature of Iran sanctions compliance and the attendant Board discussion on this issue would suggest the need to seek Board approval for any subsequent material waiver that changed the terms of the initial Board approval.⁴¹

An estimated \$100.0 million of the Petrobras CGF was utilized to finance and guarantee subtransactions with shipments or services performed between January 1, 2009 and July 14, 2009. We conducted additional testing to assess whether any of the U.S. exports financed by EXIM Bank during this time period were related to any Petrobras business in Iran. In response to an earlier draft of this report, EXIM Bank stated that it “followed the requirement in the Consolidated Appropriations Act, 2010, to reach the conclusion that Petrobras did not have significant involvement with Iran at the time of transaction authorization.” The Bank also advised that it “was aware, from its due diligence at time of authorization, that the ‘reachback’ would cover time in which Petrobras still had a relationship with Iran, and thus no further due diligence was necessary at the time of the ‘reachback’.... The purpose of the Consolidated Appropriations Act was not to penalize parties that had past relationships with Iran.”

The Bank stated further in its response that, “EXIM does not believe that any of the goods and services funded under the Petrobras CGF were diverted to Iran. All goods and services funded under the Petrobras CGF were represented to be shipped/provided to Petrobras in Brazil and were not to be used outside of Brazil.” The Bank advised that section 10.03(c) of the Facility Agreement contained a “negative covenant that the Borrower agrees not to ‘use, or permit the use of, the Goods and Services ... in a country where, Ex-Im Bank is prohibited from operating by law.’”⁴²

In addition, according to EXIM Bank staff, they reviewed the selected disbursement documentation to confirm “no goods and services were diverted to Iran.” The review by the Bank’s engineers focused on the purchase of equipment—turbine compression and generator parts—under the facility. Bank staff advised, “this type of equipment and services would not be used in the lease exploration agreement between Petrobras and Iran, which revolved around seismic analysis and exploratory drilling.” The Bank stated that it

⁴¹ In accordance with EXIM Bank’s policy for Individual Delegated Authority, the Vice President of Trade Finance authorized the first and second amendments and the transaction was not referred back to the Board for review and or approval. *Supra* note 11.

⁴² Petrobras Facility Agreement, dated May 27, 2011.

also obtained confirmation from Petrobras that they used “local contractors, who have their own equipment and employees, in conjunction with their work in Iran.”

In our follow up with Petrobras, we obtained a written certification that no EXIM Bank-guaranteed funds were expended in support of goods and services that went to Iran. Based on the representations of EXIM Bank and Petrobras, and our own review of a sampling of invoices financed through the Petrobras facility, we did not develop evidence that any EXIM Bank financing during the reachback period from January through July 2009 was related to business in Iran and in violation of the Bank’s restrictions on Iran-related transactions.

RECOMMENDATIONS

OIG recommends that EXIM Bank:

1. Review and update its policies for conducting credit file reviews to ensure completeness and integrity of the credit files and that evidence of the review is documented.
2. Develop, document and implement policies and procedures for reviews of disbursements (e.g., spot-checks and scheduled reviews) to proactively monitor compliance, identify noncompliance, and assist with reducing noncompliance with Bank requirements in a timely manner. This would include evaluating the \$250 million threshold set by the Bank to initiate a review of disbursements under the CGF program.
3. Require the Guaranteed Lenders of the CFE CGF and the OCP CGF to address the \$3.6 million in goods and the \$1.5 million in progress payments for services that were not eligible for financing, respectively, and were guaranteed by the Bank (e.g., identifying and providing eligible invoices as a substitute).
4. With respect to amendments to the terms and conditions of transactions previously approved by the Board: (i) enhance policies and procedures for CGFs to ensure the adequacy and consistency of the Bank’s due diligence (e.g., Iran sanctions due diligence) in consideration of those amendments; and (ii) in accordance with the Bank’s Individual Delegated Authority policy, develop an internal process to assess the level of materiality of proposed amendments and to discern the need to revert back to the Board for approval. Such a process should involve a deliberative body such as the Transaction Review Committee.

Management Response:

Please see Appendix A, Management Response and OIG Evaluation.

Point of Inquiry 2: Is the use of a reachback option for CGFs consistent with EXIM Bank’s mission to create and sustain U.S. jobs through the financing of U.S. exports?

Applicable Standards, Terms and Conditions

OIG reviewed various Applicable Standards, Terms and Conditions and focused on the following:

1. Procedures for processing applications and waivers for and documenting CGFs outlined in Chapters 7 and 12 *Credit Guarantee Facilities* of EXIM Bank’s Loan, Guarantee and Insurance Manual (Loan Manual), dated January 2010 and April 2015, respectively;
2. Policy and rationale for CGFs outlined in the *Credit Guarantee Facilities* section of the Bank’s Guarantee Program: Technical Handbook (Guarantee Handbook), dated October 1995;
3. Policies for *Additionality* and *Reachbacks* outlined in the Bank’s Policy Handbook (Policy Handbook), dated June 2005;
4. Terms and conditions of the Facility Agreements and Facility Guarantee Agreements for the five judgmentally selected CGF transactions; and
5. Federal guidance on internal controls and policies for credit programs outlined in GAO’s *Standards for Internal Controls for the Federal Government*, and OMB Circulars A-123 and A-129.

EXIM Bank Policies, Procedures and Guidance – CGF Program and Federal Guidance on Internal Controls and Policies for Credit Programs

See Point of Inquiry 1 above for a summary of these policies, procedures and guidance.

Finding 2: Certain CGF transactions refinanced exports that had already occurred years prior to the operative date of the facility, waiving a policy put in place to ensure the program provides additional support for new U.S. exports.

A core element of EXIM Bank’s mission is that its activities promote the development or maintenance of U.S. jobs through the export of U.S. goods and services. In extending financial support for a transaction, the Charter requires the Bank to “supplement and encourage” private capital as opposed to competing with it.⁴³ According to the Bank’s Policy Handbook, the policy of the Bank is to support transactions that foster additional exports. The Bank does this by focusing on financing transactions where the probability of a transaction involving U.S. exports is unlikely to proceed without Bank support (i.e., termed “additionality”). In addressing additionality, EXIM Bank considers primarily the

⁴³ Section 2(b)(1)(B).

availability of competing private or other export credit agency (ECA) financing for a transaction.⁴⁴

For the five CGFs we reviewed, the primary rationale documented for Bank support at board approval was the lack of availability of private sector financing and/or competing ECA financing (see Appendix C).⁴⁵ Like other medium- and long-term EXIM Bank products, the CGF program has a standard reachback period, in which the Bank would finance or refinance the shipment of goods and/or services performed that had occurred 180 days prior to the operative date.⁴⁶ The Bank's policy for CGFs, however, can be waived to extend the initial eligibility date beyond the standard 180 day period, if requested by the Borrower.

In response to an earlier draft of this report, Bank staff explained that the underlying policy rationale for a reachback period is to finance transactions that occurred between the time EXIM Bank made a preliminary indication that the case would likely meet all eligibility criteria (e.g., content and additionality) and all documentation was completed and the facility becomes operative. Bank staff stated that the "reachback policy reflects the reality that exporters ship prior to finalizing EXIM Bank financing ... [and therefore the Bank] ... adapts its formal cover to the actual dynamics of the transaction" (i.e., adapts to the commercial requirements).

According to EXIM Bank's Guarantee Handbook, the reachback policy for the CGF program was set for six months prior to the operative date to prevent "the possibility that Ex-Im Bank would be asked to support transactions that may have been shipped two to five years prior to authorization." The Handbook states further, "this flexibility was not the intent of the program and calls into question the 'need' of the obligor for ECA (Export Credit Agency) financing." Consequently, the Bank "tightened" its standard timeframe for CGF reachback "to increase the likelihood that the transaction is *additional* (i.e., needing ECA support)." (emphasis in original). EXIM Bank staff explained in its response that the "... 'flexibility' is not the standard applied to all CGFs; instead, it is given on a case-by-case basis after additionality has been determined." The Bank provided further clarification stating:

⁴⁴ EXIM Bank's policy for additionality stated: "The concept of additionality has its roots in broad U.S. economic policy and is not limited to trade/Ex-Im Bank policy. U.S. economic policy states that U.S. government resources are a limited commodity and only in rare cases should these limited resources be used on an entitlement basis. Rather, taxpayers dollars ought to be channeled to those entities that actually need the support. Thus, Ex-Im Bank programs reflect both the broad philosophical concept of additionality as well as specific congressional directives."

⁴⁵ The Application for Medium-Term Insurance or Guarantee used for CGFs requires applicants to identify whether Bank support is needed because of competing foreign vendors, foreign producers with export credit support, or limited available financing (EXIM Bank form EIB-03-02). The rationale for Bank support is also delineated in the Board Memo for a transaction.

⁴⁶ For example, for medium- and long-term transactions, shipments that occurred 12 months prior to the final commitment application or insurance application may be eligible for EXIM Bank financing and guarantee.

“This reasoning established the standard CGF reachback policy of 6 months before the operative date and EXIM was confident that all CGF disbursements were likely additional. It should be noted that transactions are approved for a reachback extension on a case-by-case basis. Extensions occur when a prospective applicant enters into conversations with EXIM, signaling their intention to use EXIM and demonstrating the additionality for their transaction. These conversations can occur months or years before the application is submitted, making a deviation from the standard reachback policy only permissible on a case-by-case basis after additionality and intention to use EXIM financing have been shown.”

However, OIG notes that these earlier conversations between Bank staff and prospective applicants and determinations of permissibility were not clearly documented in the credit files reviewed.

For the CGF program, our review found that the reachback period was frequently extended well beyond the standard 180 day period, with the result that some CGF facilities were utilized to refinance goods and services already acquired by the foreign borrower and exported from the U.S. Specifically, the Petrobras facility financed 100 percent reachback transactions dating from 30 months prior to the operative date and the Ecopetrol facility financed 88 percent reachback transactions dating from 42 months prior to the operative date. We did not find evidence that when granting these waivers to the standard 180 day reachback policy, which was put in place to ensure the necessity and additionality of EXIM Bank financing, the Bank considered the effect of refinancing previous exports on additionality or U.S. job creation. According to Bank staff, the extension of the reachback period was to meet the commercial requirements of the transactions. See Appendix G for details on reachback waivers and other amendments.

While the Board Memos for four of the CGFs reviewed contained provisions for reachbacks (see Appendix H), the memos did not discuss the extent to which goods or services acquired during the reachback period could be covered by the facilities. The only indication that we observed where the Bank considered the effect of a reachback on the furtherance of exports was in the credit file for Petrobras. In an email to the Borrower, Bank staff expressed concerns that the Bank would be “re-financing a large portion (50%) of exports rather than supporting new exports from USA.” In its response, EXIM Bank staff explained that the likelihood of follow-on exports is not the same as additionality. The reachback exception in this case was limited to the “first drawing (set of disbursements).” However, this was the only drawing of the facility totaling \$300.1 million (100 percent) in reachback subtransactions.

EXIM Bank’s stated rationale for the policy limiting the reachback period in the CGF program is that a lengthy reachback period for CGFs calls into question the need for ECA financing and that limiting the reachback period increases the likelihood that the transaction is additional. Therefore, the frequent use of waivers to extend the reachback period beyond the standard 180 day period calls into question whether the refinancing of previous exports through the CGF program is providing additional support for U.S. exports and U.S. jobs.

RECOMMENDATIONS

OIG recommends that EXIM Bank:

5. Review and update the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers. In reviewing and updating the reachback policy, the Bank should analyze the case-by-case determination of a reachback relative to the average policy date (i.e., operative date); consider establishing limits on the utilization of the facility for reachback transactions; set requirements for communicating analysis of reachback issues to decision makers including the Board; and establish procedures for consideration of waivers to the policy. This would include documenting the supporting evidence in the credit file.

Management Response:

Please see Appendix A, Management Response and OIG Evaluation.

CONCLUSION

Our evaluation found that EXIM Bank generally administered the CGF program in accordance with its policies and procedures. While the Bank streamlined the approval process for disbursements and guarantee issuances and the credit files for each of the five facilities reviewed were reasonably complete and orderly, the independent review of the files was not fully documented. Additionally, our review of disbursements identified instances of non-compliance resulting in \$5.1 million in shipment of goods and progress payments for services that were not eligible for financing and guarantee under two facilities. Further, although the Bank modified an eligibility date that was material to compliance with Iran sanctions restrictions without consistent due diligence, we found no evidence that this control weakness resulted in a violation of the restrictions.

Finally, we determined that certain CGF transactions refinanced exports that had already occurred years prior to the operative date of the facility, waiving a policy put in place to ensure the program provides additional support for new U.S. exports.

APPENDIXES

Appendix A: Management Response and OIG Evaluation



Reducing Risk. Unleashing Opportunity.

March 29, 2017

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

Dear Mr. McCarthy,

Thank you for providing the Export-Import Bank of the United States (“EXIM Bank” or “the Bank”) management with the Office of the Inspector General’s (“OIG”) “Report on EXIM Bank’s Credit Guarantee Facility Program,” dated March, 2017 (the “Report”). Management continues to support the OIG’s work which complements the Bank’s efforts to continually improve its processes. EXIM Bank is proud of the strong and cooperative relationship it has with the OIG.

The OIG conducted an evaluation of the Bank’s policies and procedures for the Credit Guarantee Facility (“CGF”) program and the credit files and related documents for five CGFs. The OIG contracted with CliftonLarsonAllen (“CLA”) to facilitate the evaluation. The Bank appreciates the OIG recognizing that “EXIM Bank generally administered the CGF program in accordance with its policies and procedures, streamlined the approval process for disbursements and guarantee issuances, and maintained orderly credit files for each of the five facilities reviewed.”

The OIG has made five recommendations to the Bank’s CGF policies and procedures. The Bank fully concurs with four recommendations, and concurs in part with one recommendation. EXIM Bank fully concurs with recommendations 1, 2, 4 and 5, and concurs in part with Recommendation 3.

The Report and Recommendation 3 reference a CGF transaction with \$3.6 million in goods shipped which the OIG found to be not eligible for financing. In this case, the Board at the time of authorization approved a reachback term going back to February 2012, exceeding the standard six month reachback term. The Board memo contained this request for an extended term. This transaction was approved by the Board with a 4-0 vote. The referenced subsequent amendment, made using Individual Delegated Authority, which used a reachback term going to September 30, 2012 did not supersede the Board’s initial decision. The Board unanimously approved the February 2012 date, and no subsequent actions taken reversed this approval. Accordingly, the \$3.6 million financing, which included a shipment made on September 21, 2012, was fully eligible for financing and should not be considered a questioned cost. The Bank agrees with the OIG Report that the shipment was made outside of the date stipulated in the administrative amendment. The Bank disagrees with the Recommendation requiring the Guaranteed Lender to address the \$3.6 million in goods that were shipped. The Bank will work to address the issue, not the Guaranteed Lender.

Recommendation 1: Review and update its policies for conducting credit file reviews to ensure completeness and integrity of the credit files and that evidence of the review is documented.

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Management Response: The Bank concurs with this recommendation.

The Bank's Trade Finance Division currently has policies in place for conducting credit file reviews for all transactions, including CGF transactions. The division currently uses a document checklist for loan officers regarding the preparation and inclusion of all required documents in a paper-based loan file, processed via APS. (See Appendix 7-A of the Loan, Guarantee and Insurance Manual.) At the completion of the underwriting process, the division's Vice President reviews credit files and certifies to the completeness and integrity of the credit files.

Recommendation 2: Develop, document and implement policies and procedures for reviews of disbursements to proactively monitor compliance, identify noncompliance, and assist with reducing noncompliance with Bank requirements in a timely manner. This would include evaluating the \$250 million threshold set by the Bank to initiate a review of disbursements under the CGF program.

Management Response: The Bank concurs with this recommendation.

The Bank's Credit Review and Compliance Division is currently updating its policies and procedures for post-disbursement reviews to proactively monitor compliance, identify noncompliance, and assist with reducing noncompliance with Bank requirements in a timely manner, including the \$250 million threshold set by the Bank to initiate a review of disbursements under the CGF program.

Recommendation 3: Require the Guaranteed Lenders of the CFE CGF and the OCP CGF to address the \$3.6 million in goods and the \$1.5 million in progress payments for services that were not eligible for financing, respectively, and were guaranteed by the Bank (e.g., identifying and providing eligible invoices as a substitute).

Management Response: The Bank concurs with this recommendation in part.

With respect to the \$1.5 million in progress payments for services that occurred prior to the approved initial eligibility date of March 1, 2013 under the OCP CGF, the Bank obtained replacement invoices and disbursement documents from the Lender and provided documentation to the OIG, as acknowledged in the Report.

As mentioned earlier in the Management Response, the Bank will work to address the issue associated with the \$3.6 million in shipments under the CFE CGF, not the Guaranteed Lender.

Recommendation 4: With respect to amendments to the terms and conditions of transactions previously approved by the Board: (i) enhance policies and procedures for CGFs to ensure the adequacy and consistency of the Bank's due diligence (e.g., Iran sanctions due diligence) in consideration of those amendments; and (ii) in accordance with the Bank's Individual Delegated Authority policy, develop an internal process to assess the level of materiality of proposed amendments and to discern the need to revert back to the Board for approval. Such a process should involve a deliberative body such as the Transaction Review Committee.

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Management Response: The Bank concurs with this recommendation.

The Bank's Office of General Counsel will review the Bank's current policies and procedures to ensure the adequacy and consistency of the Bank's due diligence in consideration of those amendments; and in accordance with the Bank's Individual Delegated Authority policy, review the internal process to assess the level of materiality of proposed amendments and to discern the need to revert back to the Board for approval. Policies and procedures will be enhanced and implemented as deemed necessary by the Bank's review.

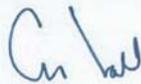
Recommendation 5: Review and update the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers. In reviewing and updating the reachback policy, the Bank should analyze the case-by-case determination of a reachback relative to the average policy date (i.e., operative date); consider establishing limits on the utilization of the facility for reachback transactions; set requirements for communicating analysis of reachback issues to decision makers including the Board; and establish procedures for consideration of waivers to the policy. This would include documenting the supporting evidence in the credit file.

Management Response: The Bank concurs with this recommendation.

The Bank's Policy Analysis Division is currently reviewing and updating, where applicable, the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers. In reviewing and updating the reachback policy, the Bank will analyze the case-by-case determination of a reachback relative to the average policy date; consider establishing limits on the utilization of the facility for reachback transactions; set requirements for communicating analysis of reachback issues to decision makers including the Board; and establish procedures for consideration of waivers to the policy, to include documenting the supporting evidence in the credit file.

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 EXIM 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 and President (acting)

OIG Evaluation

On March 29, 2017, EXIM Bank provided its management response to a draft of this report, agreeing with four of the OIG's recommendations and partially agreeing with one of the recommendations. The response identified the Bank's actions taken or planned to address the recommendations. OIG considers the Bank's actions sufficient to resolve the reported recommendations, which will remain open until OIG determines that the agreed upon corrective actions are completed and responsive to the reported recommendations. The Bank's management response to the five recommendations and OIG's assessment of the response are as follows:

RECOMMENDATION 1

Recommendation 1: Review and update its policies for conducting credit file reviews to ensure completeness and integrity of the credit files and that evidence of the review is documented.

Management Response: The Bank concurs with this recommendation.

The Bank's Trade Finance Division currently has policies in place for conducting credit file reviews for all transactions, including CGF transactions. The division currently uses a document checklist for loan officers regarding the preparation and inclusion of all required documents in a paper-based loan file, processed via APS. (See Appendix 7-A of the Loan, Guarantee and Insurance Manual.) At the completion of the underwriting process, the division's Vice President reviews credit files and certifies to the completeness and integrity of the credit files.

Evaluation of Management's Response: Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

RECOMMENDATION 2

Recommendation 2: Develop, document and implement policies and procedures for reviews of disbursements (e.g., spot-checks and scheduled reviews) to proactively monitor compliance, identify noncompliance, and assist with reducing noncompliance with Bank requirements in a timely manner. This would include evaluating the \$250 million threshold set by the Bank to initiate a review of disbursements under the CGF program.

Management Response: The Bank concurs with this recommendation.

The Bank's Credit Review and Compliance Division is currently updating its policies and procedures for post-disbursement reviews to proactively monitor compliance, identify noncompliance, and assist with reducing noncompliance with Bank requirements in a timely manner, including the \$250 million threshold set by the Bank to initiate a review of disbursements under the CGF program.

Evaluation of Management's Response: Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

RECOMMENDATION 3

Recommendation 3: Require the Guaranteed Lenders of the CFE CGF and the OCP CGF to address the \$3.6 million in goods and the \$1.5 million in progress payments for services that were not eligible for financing, respectively, and were guaranteed by the Bank (e.g., identifying and providing eligible invoices as a substitute).

Management Response: The Bank concurs with this recommendation in part.

With respect to the \$1.5 million in progress payments for services that occurred prior to the approved initial eligibility date of March 1, 2013 under the OCP CGF, the Bank obtained replacement invoices and disbursement documents from the Lender and provided documentation to the OIG, as acknowledged in the Report.

As mentioned earlier in the Management Response, the Bank will work to address the issue associated with the \$3.6 million in shipments under the CFE CGF, not the Guaranteed Lender.

Evaluation of Management's Response: EXIM Bank's actions partially address the recommendation. OIG reviewed the replacement invoices and disbursements documents obtained by the Bank to address the \$1.5 million in progress payments for services that were not eligible for financing and guarantee under the OCP CGF. However, OIG respectfully disagrees with EXIM Bank's assertion that the initial eligibility date approved for the CFE CGF was February 2012 and that the \$3.6 million in the shipment of goods was eligible for financing and guarantee.

OIG's evaluation of evidence confirmed the Bank's intention and subsequent actions to extend the initial eligibility date for the facility to September 30, 2012. That evidence includes amendments of the final commitment (see Appendix G of this report), disbursement documentation and written notices to the Guaranteed Lender.

Although the Board Memorandum dated December 6, 2012 for the facility included the statement that "the lender is requesting reachback for this transaction starting February 2012," there is no recommendation or supporting rationale from staff to accept the lender's request. Further, the transcript for the Board's approval of the facility did not discuss the earlier date. In addition, the terms of the facility outlined on the APS cover page of the memorandum do not reflect this request. Rather, it states the initial eligibility date as "TBD."⁴⁷ The cover page is also signed off on by the Loan Officer, Office of General Counsel and the Vice President for Trade Finance. Finally, OIG received written confirmation from Bank staff that the initial eligibility date for the facility was September 30, 2012. Bank staff attributed the inclusion of the \$3.6 million in goods that were shipped prior to the reachback date to a "misunderstanding or error" on part of the Guaranteed Lender.

⁴⁷ As stated in Chapter 12 of the Bank's Loan Manual, "Because many features of a CGF's credit structure, such as initial eligibility dates, final disbursement dates, and repayment dates cannot be determined at the time of authorization, many APS entries which are normally required for a transaction are left blank or 'TBD', as indicated in the APS glossary."

OIG acknowledges EXIM Bank’s intention to address the \$3.6 million in shipments under the CFE CGF internally. However, in consideration of the above factors, we consider this recommendation as open or “non-concurrence.”

RECOMMENDATION 4

Recommendation 4: With respect to amendments to the terms and conditions of transactions previously approved by the Board: (i) enhance policies and procedures for CGFs to ensure the adequacy and consistency of the Bank’s due diligence (e.g., Iran sanctions due diligence) in consideration of those amendments; and (ii) in accordance with the Bank’s Individual Delegated Authority policy, develop an internal process to assess the level of materiality of proposed amendments and to discern the need to revert back to the Board for approval. Such a process should involve a deliberative body such as the Transaction Review Committee.

Management Response: The Bank concurs with this recommendation in part.

The Bank’s Office of General Counsel will review the Bank’s current policies and procedures to ensure the adequacy and consistency of the Bank’s due diligence in consideration of those amendments; and in accordance with the Bank’s Individual Delegated Authority policy, review the internal process to assess the level of materiality of proposed amendments and to discern the need to revert back to the Board for approval. Policies and procedures will be enhanced and implemented as deemed necessary by the Bank’s review.

Evaluation of Management’s Response: Management’s actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

RECOMMENDATION 5

Recommendation 5: Review and update the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers. In reviewing and updating the reachback policy, the Bank should analyze the case-by-case determination of a reachback relative to the average policy date (i.e., operative date); consider establishing limits on the utilization of the facility for reachback transactions; set requirements for communicating analysis of reachback issues to decision makers including the Board; and establish procedures for consideration of waivers to the policy. This would include documenting the supporting evidence in the credit file.

Management Response: The Bank concurs with this recommendation.

The Bank’s Policy Analysis Division is currently reviewing and updating, where applicable, the reachback policy for the CGF program to be consistent with actual practice and reduce the need for waivers. In reviewing and updating the reachback policy, the Bank will analyze the case-by-case determination of a reachback relative to the average policy date; consider establishing limits on the utilization of the facility for reachback transactions; set requirements for communicating analysis of reachback issues to decision makers including the Board; and establish procedures for consideration of waivers to the policy, to include documenting the supporting evidence in the credit file.

Evaluation of Management’s Response: Management’s actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

Table 2: Summary of Management’s Comments on the Recommendations				
Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date ⁴⁸	Resolved: Yes or No ⁴⁹	Open or Closed ⁵⁰
1.	EXIM Bank currently has policies and procedures in place for conducting credit file reviews. Bank staff utilize a document check list to ensure required documentation is in the credit file. The division’s Vice President reviews the credit file and certifies to its completeness and integrity.	No Target Completion Date	Yes	Open
2.	EXIM Bank is updating its policies and procedures for disbursement reviews and the \$250 million threshold set by the Bank to initiate a review of CGF program disbursements.	No Target Completion Date	Yes	Open
3.	EXIM Bank concurs with the recommendation in part. The Bank addressed the \$1.5 million in progress payments that were not eligible for financing and guarantee under the OCP CGF. The Bank plans to address the issue associated with the \$3.6 million in shipments under the CFE CGF internally, not with the Guaranteed Lender.	No Target Completion Date	No	Open
4.	EXIM Bank plans to review and enhance its current policies and procedures for conducting due diligence and processes for amending the terms and conditions of CGFs. The Bank also plans to review its internal processes for assessing the level of materiality of proposed amendments and the need to revert back to the Board for approval.	No Target Completion Date	Yes	Open

⁴⁸ EXIM Bank OIG has requested target completion dates for each of the outstanding recommendations.

⁴⁹ “Resolved” means that (1) Management concurs with the recommendation, and the planned, ongoing, and completed corrective action is consistent with the recommendation; or (2) Management does not concur with the recommendation, but alternate action meets the intent of the recommendation.

⁵⁰ Upon determination by the EXIM Bank OIG that the agreed-upon corrective action has been completed and is responsive to the recommendation, the recommendation can be closed.

Table 2: Summary of Management’s Comments on the Recommendations				
Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date ⁴⁸	Resolved: Yes or No ⁴⁹	Open or Closed ⁵⁰
5.	EXIM Bank is currently reviewing and updating its reachback policy for CGFs to be consistent with actual practice and to reduce the need for waivers. On a case-by-case basis, the Bank plans to analyze its reachback determinations and will consider establishing limits on the utilization of a facility for reachback transactions. Further, EXIM Bank will establish requirements for reporting the results of its analysis to decision makers and procedures for waiver considerations. Supporting evidence is to be documented in the credit file.	No Target Completion Date	Yes	Open

Table 3: Schedule of Questioned Costs			
Rec. No.	Disallowed ⁵¹	Unsupported ⁵²	Funds to Be Put to Better Use ⁵³
3.	\$3,614,330.02	-	-
4.	\$1,514,914.51	-	-
Total	\$5,129,244.53	-	-

⁵¹ Disallowed costs are costs charged to an EXIM Bank-financed loan or Bank-guarantee, program or activity that the OIG believes are not allowable (i.e., ineligible) by law; contract; or Federal policy or regulation.

⁵² Unsupported costs are those costs charged to an EXIM Bank-financed loan or Bank-guarantee, program or activity when the OIG cannot determine eligibility at the time of the inspection or evaluation.

⁵³ Recommendations for funds to be put to better use are estimates of amounts that could be used more efficiently if an OIG recommendation is implemented.

Appendix B: CGF Transactions and Disbursements Reviewed

Table 4: Transactions Reviewed						
Deal No. & Borrower	Board Approval & Operative	No. of Days to Operative	Total Amount (in millions)			
			Authorized	Disbursed	Exposure	Reachback Funded and %
AP084193XX – Petrobras	02/04/2010; 08/01/2011	543	\$308.2	\$300.1	\$0.0	\$300.1 (100%)
AP084891XX – Ecopetrol	12/16/2010; 07/09/2013	936	\$420.4	\$151.3	\$64.1	\$132.8 (88%)
AP087483XX – CFE	12/20/2012; 09/30/2013	284	\$89.2	\$89.2	\$40.5	\$32.9 (37%)
AP088270XX – OCP	09/04/2014; 04/08/2016	582	\$92.2	\$15.9	\$92.2	\$15.9 (100%)
AP082367XC – Aeromexico	12/18/2014; 03/13/2015	85	\$50.9	\$50.9	\$42.5	\$0.0 (0%)
Grand Total			\$960.9	\$607.4	\$239.3	\$481.7

Source: EXIM Bank Data as of September 30, 2016

Table 5: Disbursements Reviewed				
Guarantee Certificate No.	Selected ⁵⁴	Financed & Guaranteed	Exposure Fee ⁵⁵	Contents
AP084193XX – Petrobras – 40 Disbursements				
1	First	\$7,127,196.13	(b) (4)	7 Master Invoices (MI) – 57 Invoices, Multiple Exporters
8	Random	\$7,122,985.71	(b) (4)	23 MIs – 174 Invoices, Multiple Exporters
14	Random	\$7,128,741.96	(b) (4)	8 MIs – 72 Invoices, Multiple Exporters
24	Random	\$7,758,810.34	(b) (4)	36 MIs – 88 Invoices, Multiple Exporters
40	Last	\$382,377.34	(b) (4)	2 MIs – 2 Invoices, 1 Exporter
AP084891XX – Ecopetrol – 37 Disbursements				
1	First	\$4,844,811.34	(b) (4)	72 Invoices, Multiple Exporters
7	Largest	\$9,950,546.87	(b) (4)	95 Invoices, Multiple Exporters
37	Last	\$1,702,983.92	(b) (4)	33 Invoices, Multiple Exporters

⁵⁴ Generally, we attempted to select at least three disbursements for review—the first, largest and last disbursement for each of the five facilities. However, in some instances we had to select an additional disbursement(s) (e.g., a disbursement was the first and largest). To date, only two disbursements have been made under the OCP CGF.

⁵⁵ The exposure fees for the Ecopetrol disbursements were not financed.

Table 5: Disbursements Reviewed				
Guarantee Certificate No.	Selected ⁵⁴	Financed & Guaranteed	Exposure Fee ⁵⁵	Contents
AP087483XX – CFE – 52 Disbursements				
GC14013580	First & Largest	\$9,678,368.65	(b) (4)	2 Invoices, 1 Exporter
GC14043855	Random	\$7,215,832.86	(b) (4)	31 Invoices, 1 Exporter
GC14074140	Last	\$508,131.77	(b) (4)	2 Invoices, 1 Exporter
AP088270XX – OCP – 2 Disbursements				
GC400731	First	\$7,941,844.29	(b) (4)	9 Invoices, 1 Exporter
GC400818	Second	\$7,982,888.46	(b) (4)	13 Invoices, Multiple Exporters
AP082367XC – Aeromexico - 9 Disbursements				
GC400254	First	\$7,818,265.11	(b) (4)	8 Invoices, Multiple Exporters
GC400304	Largest	\$9,816,635.04	(b) (4)	11 Invoices, Multiple Exporters
GC400446	Latest	\$648,114.32	(b) (4)	47 Invoices, Multiple Exporters
Grand Total		\$97,628,534.11		

Source: EXIM Bank Credit Files and Facility Agent and/or Purchasing Agent Disbursement Files

Appendix C: CGF Transactions Reviewed – Narratives

Petrobras Brasilia, S.A. and Petrobras Netherlands, BV (collectively, Petrobras) - AP084193XX

Petrobras, the national oil company of Brazil and one of the largest oil producers in the world, was founded in 1953. From exploration to refining and distribution, Petrobras is involved in all facets of oil production. EXIM Bank's working relationship with Petrobras began in the 1970s. The Board approved a Preliminary Commitment (PC) to Petrobras for \$2 billion on April 14, 2009. A portion of the Petrobras PC, \$308.2 million, was converted to a CGF and approved by the Board on February 4, 2010, and became operative on August 1, 2011.⁵⁶ When the Petrobras CGF was approved, Petrobras' financial performance and management teams were perceived as transaction strengths, while previous business dealings with Iran were perceived as transaction weaknesses. The Petrobras PC and CGF were approved by the Board to support U.S. exports, to address foreign competition, specifically from the China Development Bank, and to provide opportunities for follow-on business between Petrobras and U.S. exporters. Petrobras requested EXIM Bank support to address the lack of comparable medium-term private financing under Petrobras' capital expansion plan. After board approval, two reachback waivers were approved that extended the reachback period to 30 months prior to the operative date with repayment terms truncated in accordance with OECD requirements (i.e., 5-year repayment terms reduced to 3- and 4-years terms).⁵⁷ The total amount disbursed under the facility was \$300.1 million. All invoices financed under the facility were for subtransactions with shipments or services performed that occurred between January 2009 and December 2012, with a total of \$300.1 million (100 percent) in reachback disbursements. On February 16, 2016, Petrobras made its final payment on the facility.

Ecopetrol S.A. (Ecopetrol) - AP084891XX

Ecopetrol, the national oil company of Colombia and the fourth largest South American oil producer, was founded in 1921. From exploration to refining, and distribution, Ecopetrol is a vertically integrated company. The Board approved a PC to Ecopetrol for \$1 billion on January 15, 2010. A portion of the Ecopetrol PC, \$420.4 million, was converted to a CGF and approved by the Board on December 16, 2010, and became operative on July 9, 2013. At the time of approval, Ecopetrol did not have debt facilities with any export credit agency (ECA). Additionally, at the time of board approval, Ecopetrol's recent S&P upgrade, improved country risk rating, and strategic market status were perceived as transaction strengths, while commodity price fluctuation and potential government interference were perceived as transaction weaknesses. The Ecopetrol PC and CGF were approved by the Board to address the lack of available private financing, to encourage the export of U.S. goods to Ecopetrol, and to compete with European and Asian exporters. After the facility was approved, it was amended to reflect a change in guaranteed lender, disbursement

⁵⁶ A Preliminary Commitment (PC) is an offer of EXIM Bank financing subject to the award of the export contract and the Bank's review of a Final Commitment application, which is valid for six months and renewable in six-month increments for up to two years from the expiry date last approved by the Board.

⁵⁷ *Supra* note 40.

procedures, and financed amount. Additionally, after board approval, three reachback waivers were approved to extend the reachback period from the standard six months to nine to 42 months prior to the operative date with repayment terms truncated in accordance with OECD requirements (i.e., 5-year repayment terms reduced to 2.5-, 3-, 3.5-, 4-, and 4.5-year terms). The total amount disbursed under the facility was \$151.3 million. All invoices financed under the facility were for subtransactions with shipments or services performed that occurred between January 2010 and February 2014, with a total of \$132.8 million (88 percent) in reachback disbursements. As of September 30, 2016, EXIM Bank's exposure was \$61.4 million.

Comission Federal De Electricidad (CFE) - AP087483XX

CFE is Mexico's wholly owned electricity utility power company. At the time of board approval, CFE provided power to 97.61 percent of the Mexican population and had a production capacity of 52.854 megawatts from diverse energy sources. The CFE CGF was approved on December 20, 2012, for \$89.2 million, and became operative on September 30, 2013. At the time of board approval, CFE's monopoly position, sales growth, and favorable market ratings were perceived as transaction strengths, while a high leverage ratio and increased operating costs were perceived as transactions weaknesses. The CFE CGF was approved by the Board to address the lack of available private financing and to compete with ECA-backed European exporters. After board approval, a reachback waiver was approved, extending the reachback period from six to 11 months prior to the operative date with repayment terms truncated in accordance with OECD requirements (i.e., 5-year repayment terms reduced to 4-year terms). The total amount disbursed under the facility was \$89.2 million. All invoices financed under the facility were for subtransactions with shipments or services performed that occurred between September 2012 and January 2014, with a total of \$32.9 million (37 percent) in reachback disbursements. As of September 30, 2016, EXIM Bank's exposure was \$40.5 million.

OCP S.A. (OCP) - (AP088270XX)

OCP, a Moroccan, state owned, phosphate mining and production company, is one of the world's largest phosphate exporters. From extraction and processing to sales, OCP is involved in all facets of the phosphate market. The OCP CGF was approved by the Board on September 4, 2014, for \$92.2 million and became operative on April 8, 2016. At the time of approval, OCP's monopoly position, financial flexibility, and low leverage ratio were perceived as transaction strengths, while phosphate market uncertainties and a large capital expenditure were perceived as a transaction weakness. The OCP CGF was approved to address the lack of available private financing, to develop further the Bank's relationship with OCP, and to compete with other ECAs. At board approval, the initial eligibility date for shipments to be considered for financing was "no earlier than March 2013." Thus, extending the reachback period from six to 37 months prior to the operative date with repayment terms truncated in accordance with OECD requirements (i.e., 5-year repayment terms reduced to 1.75-year terms). The invoices financed to date under the facility were for subtransactions with shipments or services performed that occurred between March 2013 and August 2015, with a total of \$15.9 million (100 percent) in reachback disbursements. As of September 30, 2016, EXIM Bank's exposure was \$92.2 million.

Aerovias de Mexico, SA de CV (Aeromexico) - AP082367XC

Aeromexico, one of Latin America’s largest airlines, was founded in 1934. Aeromexico is Mexico’s flagship airline, was privatized in the late 1980s and in 2007, and has been a Delta Airlines partner since 1994. The Aeromexico CGF was a renewal of a previous CGF. The facility was approved by the Board on December 18, 2014 for \$40.7 million, and became operative on March 13, 2015. The Aeromexico CGF was reviewed and approved by the Board in conjunction with a second Aeromexico transaction (long-term guarantee). At the time of board approval, Aeromexico’s market presence and airport slot advantage were perceived as transaction strengths, while fluctuating jet fuel prices and a competitive domestic market were perceived as transaction weaknesses. The Aeromexico CGF was approved by the Board to address the lack of available private financing, to level the playing field, specifically against competition from European ECAs, and to provide reliable financing during a period of commercial financing uncertainty. After the Board’s initial approval, the authorized amount for the facility was increased to \$50.9 million through an amendment (dated February 23, 2016).⁵⁸ The total amount disbursed under the facility was \$50.9 million. All invoices financed under the facility were for subtransactions with shipments or services performed that occurred between July 2014 and August 2015. As of September 30, 2016, EXIM Bank’s exposure was \$42.5 million.

⁵⁸ Under the Bank’s policy for Individual Delegated Authority, Board approval was not required for the amendment as the increase in the authorized amount (excluding the exposure fee) was less than or equal to \$10 million above the principal liability approved by the Board. *Supra* note 11.

Appendix D: CGF Lender Eligibility Criteria

Table 6: Lender Eligibility Criteria	
1	Lender has knowledge and experience with EXIM Bank programs for a minimum of three years and has funded at least three medium-term loans.
2	Lender must demonstrate a material track record and knowledge of EXIM Bank and other export agency programs, as well as, portfolio experience making and collecting cross-border loans.
3	Lender must possess adequate resources, lending procedures and ability to conduct due diligence on all participants.
4	Lender possesses adequate resources, lending procedures and ability to conduct due diligence on all participants.
5	Lender may have an existing credit or capital markets relationship with the Borrower.
6	Lender's capital base should be proportionately scaled to the loan size.
7	Lender's EXIM Bank claims ratio shall be acceptable using a guideline of less than 10 percent of their current portfolio.
8	Lender should possess administrative systems and procedures for handling the volume of documentation including the ability to warehouse paper documents for at least 7 years. (Note that electronic file warehousing was recommended to EXIM Bank Office of General Counsel in 2010.)
9	Lender must agree to submit to regular reviews by EXIM Bank by cross divisional teams. (New requirement as of October 2011.)

Source: EXIM Bank's Loan, Guarantee and Insurance Manual, Chapter 12. Credit Guarantee Facilities (April 2015); and EXIM Bank Notice of Intent, dated December 23, 2015

Appendix E: CGF Program – Disbursement Support Submission and Retention Requirements

For the CGF program, the standard documents required as support for disbursements are:

1. U.S. invoice
2. Evidence of payment
3. Evidence of export:
 - a. U.S. goods – Bill of Lading (e.g., onboard ocean bill of lading, air/rail way bill, truck bill of lading)
 - i. Shipment date must be on or after the Bank approved eligibility date (i.e., earliest is 180 days prior to the operative date without a reachback waiver)
 - b. U.S. services –
 - i. Services performed must be on or after the Bank approved eligibility date (i.e., earliest is 180 days prior to the operative date without a reachback waiver)
4. Exporter’s Certificate

Table 7: Disbursement Support – Documentation Submission Requirements			
Deal No. and Borrower	Disbursement Approval Process	Borrower to Guaranteed Lender/ Facility Agent	Guaranteed Lender/ Facility Agent to EXIM Bank
AP084193XX – Petrobras	Manual (Modified Disbursement Documents Process) ⁵⁹	<ul style="list-style-type: none"> • Reimbursement Request • Itemized Statement of Payment (ISP) • Exporter’s Certificate (EC) • Master Invoice (MI) • Records of Goods and Services (RGS) • Evidence of Payment 	<ul style="list-style-type: none"> • Guarantee Request • Reimbursement Request • ISP, EC, MI and RGS • Evidence of Payment
AP084891XX – Ecopetrol	Manual	<ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoices and Bill of Lading (B/L) • Evidence of Payment 	<ul style="list-style-type: none"> • Guarantee Request • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment

⁵⁹ Under the “Modified Disbursement Documents” process, the Borrower submits a Master Invoice and Records of Goods and Services in lieu of Invoices and Bills of Lading to the guaranteed lender (facility agent). By opting for this alternative process, the Borrower/Purchasing Agent is required to retain those documents for a period established in the Facility Agreement. For the Petrobras CGF, the retention period for underlying invoices and bills of lading is 10 years from Request for Reimbursement. On February 16, 2016, Petrobras made its final payment on the facility.

Table 7: Disbursement Support – Documentation Submission Requirements			
Deal No. and Borrower	Disbursement Approval Process	Borrower to Guaranteed Lender/ Facility Agent	Guaranteed Lender/ Facility Agent to EXIM Bank
AP087483XX – CFE	Electronic Compliance Program (ECP) ⁶⁰	<ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	<ul style="list-style-type: none"> • ECP Request for Disbursement Approval
AP088270XX – OCP	ECP	<ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	<ul style="list-style-type: none"> • ECP Request for Disbursement Approval
AP082367XC – Aeromexico	ECP	<ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	<ul style="list-style-type: none"> • ECP Request for Disbursement Approval

Source: Respective Facility Agreement, EXIM Bank’s OMR Disbursement Manual; Disbursement Documents Maintained by EXIM Bank, the Guaranteed Lender and/or Borrower/Purchasing Agent; and EXIM Bank Staff Interviews

Table 8: Disbursement Support – Documentation Retention Requirements			
Deal No. and Borrower	Disbursement Approval Process	Guaranteed Lender/ Facility Agent	Borrower
AP084193XX – Petrobras	Manual (Modified Disbursement Documents Process)	No retention requirement as Guaranteed Lender submitted all documents to EXIM Bank	10 Years from Request for Reimbursement (Borrower/ Purchasing Agent): <ul style="list-style-type: none"> • Invoices • B/Ls
AP084891XX – Ecopetrol	Manual	No retention requirement as Facility Agent submitted all documents to EXIM Bank	No retention requirement as Borrower did not use modified disbursement documents process
AP087483XX – CFE	ECP	7 Years from Repayment of Financing: <ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	No retention requirement as Borrower did not have modified disbursement documents process option

⁶⁰ Effective December 23, 2015, EXIM Bank issued a Notice of Intent that was applicable to its guarantee programs (includes CGF) that changed the terms of the retention requirements for transaction documents as follows: “Lenders, Lessors and Facility Agents as applicable, shall retain all Transaction Documents for a period equal to seven years after final repayment in full of the Credit.” According to Bank staff, the retention requirement is retroactive, and is applicable to the ECP CGF transactions. The Bank’s Disbursement Manual reflected the change in the retention requirement for transaction documents by the guaranteed lender (OMR Disbursement Manual, Issued 2005, Updated through January 2016).

Table 8: Disbursement Support – Documentation Retention Requirements			
Deal No. and Borrower	Disbursement Approval Process	Guaranteed Lender/ Facility Agent	Borrower
AP088270XX – OCP	ECP	7 Years from Repayment of Financing: <ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	No retention requirement as Borrower is not using modified disbursement documents process.
AP082367XC – Aeromexico	ECP	7 Years from Repayment of Financing: <ul style="list-style-type: none"> • Reimbursement Request • ISP and EC • Invoice and B/L • Evidence of Payment 	No retention requirement as Borrower did not have modified disbursement documents process option.

Source: Respective Facility Agreement, EXIM Bank’s OMR Disbursement Manual; Disbursement Documents Maintained by EXIM Bank, the Guaranteed Lender and/or Borrower/Purchasing Agent; and EXIM Bank Staff Interviews

Appendix F: Summary Results of Disbursements Testing

Table 9: Disbursement Testing Results					
Deal No. and Borrower	Disbursements Reviewed	Ineligible Goods/ Service	Missing B/Ls	Missing Invoices	Comments
AP084193XX – Petrobras	5	-	X	X	Some unsigned B/Ls and invoice missing pages; incorrect dates on MI and RGS.
AP084891XX – Ecopetrol	3	-	-	-	Transposed numbers and incorrect dates on ISPs.
AP087483XX – CFE	3	X	-	-	Ineligible shipment of goods included in one disbursement.
AP088270XX – OCP	2	X	X	-	Ineligible services performed included in one disbursement and incorrect dates on ISP.
AP082367XC – Aeromexico	3	-	-	-	-

Source: Respective Disbursement Documents Maintained by EXIM Bank, the Guaranteed Lender and/or Borrower/Purchasing Agent

Appendix G: Reachback Waivers and Other Amendments

Table 10: Reachback Waivers and Other Amendments					
Event	AP084193XX – Petrobras	AP084891XX – Ecopetrol	AP087483XX – CFE	AP088270XX – OCP	AP082367XC – Aeromexico
Board Approval Date	02/04/2010	12/16/2010	12/20/2012	09/04/2014	12/18/2014
Operative Date	08/01/2011	07/09/2013	09/30/2013	04/08/2016	03/13/2015
Per Policy (180 Days Prior to Operative Date)	02/02/2011	01/10/2013	04/03/2013	10/11/2015	09/14/2014
Per Board Memo (initial eligibility)	07/15/2009	01/15/2010 (if requested)	TBD	TBD (No earlier than 03/01/2013)	12/05/2013

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Appendix H: Reachback Provisions

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ACKNOWLEDGEMENTS

This report was prepared by the Office of Inspections and Evaluations, Office of Inspector General for the Export-Import Bank of the United States. Several individuals contributed to this report including Lilith Sanchez, Senior Inspector, Lisa Clark, Paralegal, and Jennifer Fain, Deputy AIGIE.

Office of Inspector General
Export-Import Bank *of the* United States
811 Vermont Avenue, NW
Washington, DC 20571
202-565-3908
<http://www.exim.gov/about/oig>

