



March 23, 2022

The Honorable Patrick J. Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Toomey:

Thank you for your March 9, 2022, letter regarding the Export-Import Bank of the United States' (EXIM) proposed domestic financing initiative.

I sincerely appreciate the interest that you and your staff have shown in providing feedback and input as EXIM considers this proposal. Attached are responses to the questions contained in your letter.

I hope that these answers provide greater clarity to the reasoning that underlies the proposal, and I welcome your continued feedback and input as the agency works to implement initiatives that help strengthen American supply chains, help onshore and reshore American manufacturing, and support projects that enhance American infrastructure facilities with an export nexus.

Should you have any further questions, please do not hesitate to contact me or Christopher R. Day, Senior Vice President for Congressional and Intergovernmental Affairs, at Christopher.Day@exim.gov.

Sincerely,

Reta Jo Lewis, Esq.
President and Chair, Board of Directors
Export-Import Bank of the United States

Attachment

cc: The Honorable Sherrod Brown, Chairman

**Responses to Ranking Member Toomey
Proposed Domestic Financing Initiative
Export-Import Bank of the United States
March 23, 2022**

- 1. EXIM's brief notice in the Federal Register explicitly states that this program would provide "financing with no direct export component." Please explain how "financing with no direct export component" fits within EXIM's existing authority.**

Section 2(a)(1) of the *Export-Import Bank Act of 1945*, as amended (hereafter, EXIM's Charter¹), provides that:

The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country, and in so doing to contribute to the employment of United States workers. The Bank's objective in authorizing loans, guarantees, insurance, and credits shall be to contribute to maintaining or increasing employment of United States workers. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business....

In this language, Congress plainly established that the authority of the Export-Import Bank extends beyond the direct financing of exports. The language authorizes and empowers EXIM to provide financing in furtherance of its defined objects and purposes, which include "to facilitate" exports for the purpose of contributing to "the employment of United States workers."

EXIM has long provided financing support for companies that do not directly export through its working capital guarantee and supply chain finance guarantee programs. Under these programs, EXIM is available to support the financing needs of suppliers to exporters. Without EXIM support, these supplier companies may be put at a competitive disadvantage to foreign suppliers, reducing the amount of American-made goods and services ultimately incorporated into finished U.S. exports and adversely affecting the employment of U.S. workers.

- 2. During EXIM's recent briefing to my staff, the bank's General Counsel indicated that EXIM's authority to establish a Domestic Financing Program flows from the statute that outlines the bank's powers and functions. EXIM's General Counsel went so far as to claim that any project with any direct or indirect export component, no matter how small, could qualify for EXIM support. Do you agree with that characterization of EXIM's authority? Please answer yes or no. If yes,**

¹ Codified at 12 U.S.C. § 635 *et seq.*

please explain if any limits exist on EXIM's authority to finance non-export based domestic manufacturing.

EXIM's authority to support financing of domestic projects flows from its Charter, which establishes that EXIM's objects and purposes are to finance and *facilitate* exports. Therefore, EXIM must ensure that its financing has a reasoned and articulated nexus with exports. The language of the Charter does not specify the exact nature or measure of the nexus required.

However, as a policy matter, EXIM staff have proposed setting a minimum export nexus threshold to ensure that its financing is expected to meaningfully facilitate U.S. exports.

3. Given the significant impact this program may have on EXIM's current operations (for instance, EXIM may support financing of up to \$20 billion for a single project), can you explain why EXIM did not subject this program to a robust notice-and-comment rulemaking process?

As you noted in your letter, EXIM published the proposed parameters for the domestic financing initiative in the Federal Register for a four-week public comment period on December 23, 2021.² Additionally, EXIM has further engaged congressional and public stakeholders through proactive communications, briefings, and other engagements.

4. If financing under this program will be contingent upon the number of jobs supported, how will EXIM ensure the projections provided by the borrower are accurate?

EXIM will review job projections provided by the applicant to determine whether they are reasonable. EXIM may require applicants to submit information about employment numbers at similar facilities or projects. Larger projects are typically required to hire independent technical and financial advisors to provide an unbiased, third-party review of various aspects of the project. EXIM will ask the independent advisors to opine on the reasonableness of the job numbers provided by the applicant.

EXIM will also require regular updates on employment from borrowers as part of its ongoing monitoring of financed transactions. This data will form a key part of the proposed review of the initiative as it will help EXIM understand how it can best ensure its financing of domestic projects is effectively supporting U.S. jobs.

In addition, EXIM may choose to use a lower jobs number than the applicant provided to determine maximum financing.

² Export-Import Bank of the United States. "Information Request on Potential Parameters of Export-Import Bank Financing for Domestic Projects." 86 Fed. Reg. 72967 (Dec. 23, 2021), <https://www.federalregister.gov/d/2021-27835>.

5. As EXIM requires for official export financing, will the Board also have to approve domestic transactions above a certain amount? If so, what is the amount?

Under the current proposal, EXIM's Board will approve all transactions under the domestic financing initiative for at least two years.

6. How will EXIM monitor ongoing compliance of these transactions to ensure the borrower meets the export requirement? How can EXIM ensure the accuracy of the borrower's post-authorization reporting requirements?

EXIM's loan documentation with the borrower will have ongoing reporting and other requirements. Exporters will need to certify the accuracy of this data, subject to the penalty of perjury. EXIM will also have the right to request documentation, such as export contracts and bills of lading, to confirm that the export requirement is being met.

7. What are the specific penalties if the borrower fails to comply with the export requirement?

EXIM would include various legal covenants requiring the project to report on its post-construction export performance. These covenants would give EXIM the ability to take actions if the projected exports do not materialize within a reasonable time frame. Non-compliant projects may be required to:

- produce and execute a written plan documenting steps to increase exports
- provide evidence the borrower is making a documented, reasonable effort to export at the projected levels, such as:
 - a. evidence the borrower is working with other USG export promotion agencies and/or private sector parties with the aim of meeting such projections;
 - b. evidence of efforts made and level of resources dedicated to export promotion; and
 - c. explanation why it is no longer commercially reasonable to export at the projected levels.

EXIM may also have the right to impose penalty interest rates and declare a full or partial default or trigger non-default mandatory prepayment if export projections are not met.

Appropriate safeguards will address *force majeure* and other events outside the control of the project (e.g., shortages of raw materials or embargoes on exports).

8. EXIM's recommended modifications to the proposal, which were shared with my staff, include reporting to the Board detailed employment information about projects, such as wages and union membership. If this information is not required to finance projects, how will EXIM use this data?

EXIM is seeking to collect detailed employment information to inform the Board about the type and quality of jobs supported with its transactions. However, EXIM will not seek information about union membership.

9. Do you expect EXIM to require additional resources to operate this program? If so, please provide an estimate.

EXIM does not expect it will require additional resources for the domestic financing initiative.

10. Has EXIM discussed internally or with the White House the possibility of seeking funding from Congress for this program?

EXIM is not requesting additional resources to support the domestic financing initiative and has communicated this to the Office of Management and Budget.

11. What steps will EXIM take to ensure that individual domestic transactions will not be influenced by political pressures?

EXIM is committed to reviewing transactions consistent with all applicable statutory requirements. As a demand-driven agency, EXIM financing is available to all qualifying applicants based on criteria established by law and agency policies. EXIM welcomes feedback and input from all stakeholders, including its congressional and interagency partners, to highlight issues that are relevant to the statutory requirements of transactions.

12. Please provide the data EXIM has collected to determine there is a lack of domestic financing available that warrants this program.

The United States faces major capital investment needs as it looks to secure supply chains and compete in the industries of the future. The semiconductor industry has announced \$80 billion of new investment domestically since the start of 2021.³ The auto industry is on track to invest on average \$100 billion annually over the next five years to make the transition to electric vehicles.⁴ At the same time, continued investment is needed in research and development, which makes up an ever increasing share of non-residential investment – up to 41% today, rising from 29% in 2005.⁵ As companies rely on internal sources of capital to fund research and development, there will be increasing demand on external sources of financing to finance capital investment plans.

While it is difficult to put a precise number on the scale of the gap domestically, a January 2022 McKinsey report estimated that just for net-zero transition, global “capital spending on

³ White House Briefing Room, “[Fact Sheet: Biden-Harris Administration Bringing Semiconductor Manufacturing Back to America](#),” January 21, 2022.

⁴ Ewing, Jack and Neil Boudette. “[Why this Could be a Critical Year for Electric Vehicles](#),” *The New York Times*. February 9, 2022.

⁵ “[Urge to Splurge: Why the Impressive Pace of Investment Growth Looks Likely to Endure](#).” *The Economist*. February 5, 2022.

physical assets for energy and land-use systems [...] between 2021 and 2050 would amount to about \$275 trillion, or \$9.2 trillion per year on average, an annual increase of as much as \$3.5 trillion from today.”⁶ Domestically, the American Society of Civil Engineers has repeatedly noted the critical infrastructure investment needs the United States faces. They most recently estimated an investment gap of nearly \$2.6 trillion from 2020 to 2029.⁷ While Congress has recently passed legislation to support greater investment in infrastructure projects, there remains a significant investment gap. The ASCE also finds that U.S. underinvestment in infrastructure could cost the nation \$2.24 trillion in exports over the next 20 years, indicating the close link between domestic investment and exports.

There is also a documented gap in capital access for small and medium-sized enterprises (SMEs). As documented in a May 2020 Information Technology and Innovation Foundation Report⁸:

[A] recent McKinsey study found that fully one-quarter of SME manufacturers in America’s mid-Atlantic region lacked the finances to even meet their working-capital needs. Indeed, access to capital has generally been tighter for SMEs in the United States than in other Organization for Economic Cooperation and Development (OECD) countries since the Great Recession. Moreover, studies estimate that the inability of small firms to sufficiently invest in plant and equipment upgrades contributes considerably to their stark 40 percent productivity gap with larger firms.

This financing gap for SMEs is exacerbated for minority-owned businesses. For example, a working paper published by the National Bureau of Economic Research reports that, “Black startups report substantially higher levels of loan denials and overall unmet need for capital than white startups, even after controlling for differences in credit scores and founder wealth.”⁹

While U.S. capital markets are deep and liquid, there are gaps, particularly for non-investment grade or unrated borrowers (such as in a non-recourse project finance or some middle-market companies). Many institutional investors like insurers and particularly pension funds are typically unable to hold non-investment grade debt, which is why investor appetite for such debt tends to fluctuate compared to investment grade.¹⁰ Furthermore, the same Basel III regulations that impact banks’ ability to provide long-dated loans to foreign non-investment grade borrowers also impact the availability of credit domestically. This impact also applies to unrated domestic borrowers without publicly traded securities, who are essentially forced by regulations to be treated as sub-investment grade (even if a bank’s internal rating indicates it is equivalent to investment grade).

⁶ Krishnan, Mekala; Hamid Samandari; and Jonathan Woetzel, et al. *The Net Zero Transition: What it Could Cost, What it Could Bring*, McKinsey & Company. Report: January 2022. Page viii.

⁷ <https://infrastructurereportcard.org/resources/investment-gap-2020-2029/>

⁸ Ezell, Stephen. “Policy Recommendations to Stimulate U.S. Manufacturing Innovation,” Information Technology & Innovation Foundation. Report: 18 May 2020. Page 11. (Internal citations omitted.)

⁹ Fairlie, Robert W.; Alicia Robb; and David T. Robinson. “Black and White: Access to Capital Among Minority Owned Startups,” National Bureau of Economic Research Working Paper Series, No. 28154: November 2020.

¹⁰ Çelik, S., G. Demirtaş and M. Isaksson (2020), “Corporate Bond Market Trends, Emerging Risks and Monetary Policy,” OECD Capital Market Series, Paris.

This impact is enhanced by the impact of Basel regulations on foreign banks operating in the United States, which means, in aggregate, (according to lenders) term loans for non-investment grade or unrated borrowers are typically limited in tenor. Such a tenor may not be suitable for all capital investments, which may lead to underinvestment, particularly for SMEs, as discussed above.

For specific examples, EXIM has heard from companies seeking to invest in manufacturing capacity they can only access loans with three-year tenors, which are not suitable for the type of capital investment the borrower seeks to make. EXIM also received comments from major original equipment manufacturers (OEMs) and trade associations that EXIM's domestic financing initiative would be particularly useful for smaller companies that are suppliers to major OEMs but lack the access to capital those OEMs have. These companies are often too small (or are unrated) to effectively access capital markets, and bank lending may not be sufficient for their needs.

Ultimately, EXIM's financing for domestic financing projects will be demand-driven, just like its financing for exports. Applicants will need to demonstrate that the required financing is not otherwise available from the private sector or other relevant government agencies. Additionality is time and circumstances dependent, and whether EXIM financing is additional for a specific project can only be judged in the specific context of a transaction.

13. List all stakeholders outside of EXIM with whom the bank has discussed this program on or after December 23, 2021.

Below is a list of organizations that EXIM's Office of Policy Analysis and International Relations, which is the coordinating office responsible for developing the policy proposal, has interacted with on the initiative, including those who provided public comments in response to EXIM's notice in the Federal Register. The list does not indicate the depth of discussion, whether the organizations were in favor or opposed, whether they had interest in utilizing such financing, or whether they had potential projects that would meet EXIM's proposed eligibility criteria. EXIM also provided briefings to Congress and received public comment submissions from an anonymous individual, an academic, and an independent consultant.

Aerospace Industries Association
AFL-CIO
Ambri
American Association of Port Authorities
Anfield Energy
ANZ Bank
Aquatech
Bank of America
Beatrice Foods/Cuppedia
Bechtel
BNP Paribas

Citibank
Commerce Renewable Energy and Energy Efficiency Advisory Committee
Council of Economic Advisers
Department of Commerce
Department of Defense
Department of Energy
Department of State
Department of Treasury
Deutsche Bank
Eaton
Energy Materials Corporation
EXIM Advisory Subcommittee on Climate
EXIM Advisory Subcommittee on Strategic Competition with the People's Republic of
China
Export Development Canada
Friends of the Earth
Hanwha Q Cells
Horn and Watson
HSBC
ING Bank
Ingeteam
IT&T
Joby Aviation
Korea Export-Import Bank
Liberty Green Logistics
Lilac Solutions Corp
LNG Allies
Machinists Union
Malta Inc
Manufacturing Extension Partnerships
National Association of Manufacturers
National Economic Council
National Security Council
Next Tracker
Nuclear Energy Institute
Office of Management and Budget
Office of the U.S. Trade Representative
Optimization
PNC Bank
Port of Corpus Cristi
Quantumscape
Regions Bank
Siemens Energy
Siemens Gamesa
Şişecam
Sumitomo Mitsui Banking Corporation

Suniva
Tesla
USA Rare Earth
Waare Energies