



# Management Advisory: OIG Access and Notification Language in EXIM's Working Capital Guarantee Program Master Guarantee Agreement



OIG-O-24-02  
January 25, 2024

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



## MEMORANDUM

To: Courtney Chung  
Senior Vice President/Chief Management Officer

From: Michael T. Ryan  
Assistant Inspector General for Special Reviews and Communications

Subject: Management Advisory: OIG Access and Notification Language in EXIM's Working Capital Guarantee Program Master Guarantee Agreement (Report No. OIG-O-24-02)

Date: January 25, 2024

MICHAEL  
RYAN

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This final report presents the results of our review of the Master Guarantee Agreement (MGA) issued under EXIM's Working Capital Guarantee Program. The objectives of this review were to determine whether the MGA should explicitly reference OIG's statutory authority to access the records of EXIM lenders, including Delegated Authority Lenders, and require that such lenders notify OIG of known or suspected fraud.

This report contains two recommendations. We consider management's proposed actions to be responsive. The recommendations will be closed upon completion and verification of the proposed actions.

We appreciate the cooperation and courtesies provided to this office throughout this review. If you have questions, please contact me at 202-565-3963 or at [michael.ryan@exim.gov](mailto:michael.ryan@exim.gov).

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## SUMMARY OF REVIEW

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The Export-Import Bank of the United States (EXIM) Office of Inspector General (OIG)<sup>1</sup> reviewed the Master Guarantee Agreement (MGA) issued under EXIM's Working Capital Guarantee Program (WCGP). OIG found that EXIM's MGA for the WCGP does not explicitly reference OIG's statutory authority to access the records of EXIM lenders, to include delegated authority lenders (DALs). OIG also found that the MGA does not require lenders, including DALs, to notify OIG of known or suspected fraud related to EXIM loan guarantees.

OIG issued two recommendations to ensure OIG access to lender records and mandate that EXIM lenders report known or suspected fraud to OIG. During the agency's review of this report, EXIM concurred with the recommendations.

## BACKGROUND

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As the official export credit agency of the United States, EXIM helps U.S. companies export goods and services by providing loans, loan guarantees, and export credit insurance.<sup>2</sup>

The WCGP is a loan guarantee offered to banks and finance companies that make asset-based credit lines available to U.S. businesses that export made-in-America goods and services.<sup>3</sup> Under the WCGP, EXIM guarantees a commercial lender that, in the event of a payment default by the borrower, EXIM will pay the lender 90 percent of the outstanding principal and interest on the loan.<sup>4</sup> A DAL is a lender pre-qualified by EXIM to approve loans and receive EXIM loan guarantees without EXIM's prior consent.<sup>5</sup> DALs approve over 95 percent of WCGP transactions.<sup>6</sup> The MGA is an agreement between EXIM and lenders, including DALs, which establishes the general lending parameters associated with the guarantee program.<sup>7</sup>

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<sup>1</sup> EXIM OIG is an independent oversight office within EXIM. EXIM OIG's mission is to promote the integrity, transparency, and efficiency of EXIM programs and operations by conducting and supervising audits, investigations, inspections, evaluations, and special reviews related to EXIM programs and operations, and preventing and detecting fraud, waste, abuse, and mismanagement.

<sup>2</sup> EXIM Bank, Export Finance Solutions for U.S. Businesses.

<sup>3</sup> EXIM Bank, New Pricing Structure for EXIM's WCGP.

<sup>4</sup> EXIM Bank, Working Capital Guarantee Program Manual (Manual) at 4.

<sup>5</sup> EXIM Bank, What is a "Delegated Authority Lender"?

<sup>6</sup> EXIM Bank, New Pricing Structure for EXIM's WCGP.

<sup>7</sup> The MGA is the primary document that governs the relationship between EXIM and a guaranteed lender under the program. Manual at 1. In May 2023, OIG requested from EXIM all current MGA "templates." EXIM provided OIG with the WCGP MGA, updated as of April 3, 2023. EXIM also provided OIG with the exporter supply chain finance guarantee program MGA, which does not refer to DALs.

## FINDINGS

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OIG found that EXIM's WCGP MGA does not explicitly reference OIG's authority to access EXIM lender records and does not require EXIM lenders to notify OIG of known or suspected fraud. As described below, the lack of specific language on OIG access and fraud reporting heightens the risk of ineffective oversight within EXIM's WCGP. OIG's recommendations related to the MGA are based, in part, on the Inspector General Act of 1978, as amended (IG Act), and on leading practices at other federal departments and agencies. Appendix B contains a listing of other federal programs that OIG reviewed as part of this engagement.

### **Finding 1: EXIM's Working Capital Guarantee Program Master Guarantee Agreement Does Not Explicitly Reference EXIM OIG's Authority to Access EXIM Lender Records**

OIG found that the MGA issued under EXIM's WCGP does not explicitly reference OIG's statutory authority to access the records of EXIM lenders. Specifically, Section 4.07 of the MGA requires lenders, to permit "the representatives of EXIM Bank" to inspect lender records regarding loans or financial accommodations provided by a lender to a borrower and directs the officers of the lenders to fully cooperate with any requests to access the records.<sup>8</sup> The MGA does not specifically reference OIG as having the Section 4.07 access privileges outlined above.

Section 406 of the IG Act authorizes each Inspector General (IG) "to have timely access to all records ... or other materials available to the applicable establishment" relating to the programs and operations for which that IG has responsibilities under the IG Act.<sup>9</sup> In addition to the access authorities granted by the IG Act, multiple federal agencies recognize the unique relationship between an agency and its respective OIG, and explicitly require, via the Code of Federal Regulations (C.F.R.), various entities, including lenders, to make records available to both the federal agency and its corresponding OIG.<sup>10</sup> For example, the Small Business Administration (SBA) explicitly requires that SBA lenders allow representatives authorized by the SBA OIG access to all records and documents relating to SBA guaranteed loans or as requested for SBA oversight.<sup>11</sup>

Other federal agencies explicitly state in their loan guarantee agreements that their OIG has direct access to agency records. For example, the Health Care Facility Loan Guarantee Program

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<sup>8</sup> Section 4.07 requires lenders to permit "the representatives of EXIM Bank during normal business hours to inspect its records with respect to matters relating to the Loan Facility, this Agreement or other loans or financial accommodations provided by Lender to a Borrower and shall direct its officers and employees to give their full cooperation and assistance in connection therewith." Export Import Bank of the United States Working Capital Guarantee Program MGA at 27.

<sup>9</sup> 5 U.S.C. § 406(a)(1)(A).

<sup>10</sup> OIG's research identified at least 10 federal agencies specifically require their respective OIGs to have access to the relevant records for their respective agencies. These agencies are listed in the appendix to this report.

<sup>11</sup> 13 C.F.R. 120.1010 (SBA access to SBA Lender and Intermediary files).

Loan Guarantee Agreement under the Health Resources and Services Administration (HRSA), a subagency of the U.S. Department of Health and Human Services, provides that “[t]he Lender further agrees and acknowledges that ... records and reports maintained by the Lender ... will be at all times accessible to HRSA and any of its designees (including, without limitation, the ... United States Department of Health and Human Services Office of Inspector General).”<sup>12</sup>

An EXIM official stated there is no need to specifically reference OIG’s authority to access lender records in the MGA because: (a) it would be redundant since the IG Act establishes OIG’s authority to access records relating to EXIM’s programs and operations, (b) the definition of the term “representative of EXIM Bank” found in Section 4.07 of the MGA implicitly encompasses OIG, and (c) OIG’s authority to request records from EXIM’s program participants is not diminished by omitting any reference to OIG’s authority to access records in the MGA. The EXIM official further stated that referencing separate offices within EXIM may cause confusion among EXIM’s program participants who view EXIM as a whole and not as separate offices or units. However, the IG Act establishes that OIGs are separate, independent units within an agency. Given this statutory requirement of independence, expressly referencing OIG’s authority to access the records of lenders reflects OIG’s distinct and independent oversight role at EXIM and would clarify any discrepancy regarding OIG’s authority to inspect lender records under the terms of the MGA.

OIG submits that amending the MGA issued under EXIM’s WCGP to include specific language recognizing OIG’s independent authority to access relevant records would be a leading practice recognized by the IG Act and other federal agencies. In the absence of clear OIG access provisions involving WCGP records, there is increased risk that OIG oversight of the program may be hindered or otherwise delayed.

**Recommendation 1:** EXIM’s Office of Small Business, Business Credit Division, should amend the language in Section 4.07 of EXIM’s Working Capital Guarantee Program Master Guarantee Agreement to specifically reference EXIM OIG as having authority to access EXIM lender records.

## **Finding 2: EXIM’s Working Capital Guarantee Program Master Guarantee Agreement Does Not Require EXIM Lenders to Notify EXIM OIG of Known or Suspected Fraud**

OIG also found that the MGA issued under EXIM’s WCGP does not contain explicit language requiring lenders to notify OIG of known or suspected fraud related to EXIM loan guarantees. Section 4.11 (Notice of Events) of the MGA requires lenders to notify EXIM within 10 days if the

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<sup>12</sup> Health Resources and Services Administration Health Care Facility Loan Guarantee Program LOAN GUARANTEE AGREEMENT (sample). Additionally, the U.S. Department of the Treasury’s Community Development Financial Institutions (“CDFI”) Bond Guarantee Program Agreement to Guarantee requires program participants to furnish to the Inspector General documents or other relevant information. CDFI Bond Guarantee Program Agreement to Guarantee (sample), Section 6.8. (Additional Information).

lenders have actual knowledge of a “Material Adverse Effect.”<sup>13</sup> The definition of “Material Adverse Effect” in the MGA does not explicitly refer to known or suspected fraud.<sup>14</sup> Also, a “Pre-Financing Working Capital Guarantee Business Credit Division” slide deck, which EXIM uses to train lenders, references “Material Adverse Effect” but does not include reporting known or suspected fraud among lender obligations.<sup>15</sup>

An EXIM official referred OIG to two policies regarding fraud reporting, neither of which apply to lenders. Specifically, EXIM’s Office of Board Authorized Finance (OBAF) Suspect Fraud Reporting Policy requires that OBAF notify the EXIM Office of General Counsel (OGC) Litigation, Fraud, and Compliance Group of suspected fraud or other violation of law.<sup>16</sup> In turn, per the policy, OGC is directed to refer all such matters to EXIM OIG.<sup>17</sup> Furthermore, according to the policy, in consultation with division management, the EXIM officer may also directly notify OIG that a suspected case has been uncovered at the same time that notification is provided to OGC.<sup>18</sup> Likewise, EXIM’s “Fraud and Corruption Prevention, Detection and Prosecution” policy states that EXIM “encourages and expects” all participants in EXIM transactions to report any suspicions of fraud or corruption in EXIM transactions and that all participants are “encouraged” to support EXIM’s efforts in combatting fraud and corruption.<sup>19</sup> Both of these policies, however, do not compel lenders, including DALs, to report known or suspected fraud to either EXIM or OIG.

In addition, EXIM’s “Standard Certifications and Covenants for EXIM Applications” requires lenders to certify at the time of the application and renewal that “[n]either the Applicant, nor, to the best of Applicant’s knowledge, the exporter, lender, borrower or end-user in the transaction has, within the preceding [five] years, been convicted of an act of fraud or corruption in connection with an EXIM transaction.”<sup>20</sup> If the Applicant cannot attest to this and the other certifications in the standard certifications, they must so notify EXIM.<sup>21</sup> However, this language is limited to a lender’s knowledge of a fraud conviction at the time of the application

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<sup>13</sup> MGA at 31.

<sup>14</sup> The MGA defines a “Material Adverse Effect” as a significant negative circumstance on “(a) the business, assets, operations, prospects or financial or other condition of a Borrower or any Guarantor, (b) any Borrower’s ability to pay or perform the Loan Facility Obligations in accordance with the terms thereof, (c) the Collateral or Lender’s Liens on the Collateral or the priority of such Lien, or (d) Lender’s rights and remedies under the Loan Documents.” MGA at 13.

<sup>15</sup> See Pre-Export Financing Working Capital Guarantee Business Credit Division 2023 Presentation, updated March 22, 2023 (Lender Obligations on pages 49-53).

<sup>16</sup> OBAF Suspect Fraud Reporting Policy at 2, June 2018.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> EXIM Bank, “Fraud and Corruption Prevention, Detection and Prosecution” Policy.

<sup>20</sup> EXIM Bank “Standard Certifications and Covenants for EXIM Applications.”

<sup>21</sup> Ibid.

at issue, and does not impose disclosure requirements when a lender learns of any subsequent fraud, to include any disclosure to OIG.

Further, EXIM’s “Antifraud Strategy” does not expressly require lenders, including DALs, to report known or suspected fraud. In a 2022 report, the U.S. Government Accountability Office (GAO) noted the lack of information documenting the roles and responsibilities of EXIM’s external partners, such as DALs, as part of EXIM’s Antifraud Strategy and recommended including that information in a revised Antifraud Strategy.<sup>22</sup> Subsequently, on November 18, 2022, EXIM amended its Antifraud Strategy to document the roles and responsibilities of DALs. The amended Antifraud Strategy emphasizes that DALs must exercise due diligence to “know [their] customer” but does not mandate that DALs disclose known or suspected fraud to EXIM or OIG if detected. While the “Antifraud Strategy” states that any suspicion of fraud or corruption with respect to EXIM transactions should be reported to both EXIM’s OGC and OIG, the parties subject to these reporting obligations are limited solely to EXIM employees and contractors.<sup>23</sup>

In contrast to EXIM policies and practices, other federal agencies require recipients of loan guarantee programs to notify their corresponding OIGs where known or suspected fraud has been detected.<sup>24</sup> For example, the U.S. Department of the Treasury’s (Treasury) Community Development Financial Institutions Bond Guarantee Program Agreement to Guarantee specifies that if the qualified issuer becomes aware of the existence or apparent existence of fraud, waste or abuse under the program, it “shall promptly report such incidence(s) to the Office of Inspector General of the United States Department of the Treasury.”<sup>25</sup> This provision in the agreement corresponds to the Treasury C.F.R. that states that any persons who become aware of the existence of fraud, waste, or abuse of any guarantee must report such incidents to the Treasury OIG.<sup>26</sup> The SBA also requires lenders to notify the SBA OIG of any information indicating that fraud may have occurred.<sup>27</sup>

In sum, OIG found that the lack of explicit reporting requirements for lenders that have discovered fraud or suspected fraud related to EXIM loan guarantees reflects a potential gap in EXIM’s objective to combat known or suspected fraud in its transactions. Accordingly, the absence of mandatory reporting requirements causes EXIM to operate at an increased risk of unreported fraud.

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<sup>22</sup> See Export-Import Bank Additional Documentation about Stakeholder Roles and Clarity about Fraud Risks Would Strengthen Antifraud Efforts, GAO-22-105340, published September 27, 2022.

<sup>23</sup> EXIM Bank Antifraud Strategy at 11,14.

<sup>24</sup> OIG’s research indicated that at least four federal agencies specifically require, or are expected to require, participants in various programs to report fraud or apparent fraud to their respective OIG. Additionally, other regulations require similar notifications. These agencies and rules are listed in Appendix B of this report.

<sup>25</sup> CDFI Bond Guarantee Program Agreement to Guarantee (sample).

<sup>26</sup> 12 C.F.R. 1808.627 (Fraud, waste and abuse).

<sup>27</sup> 13 C.F.R. 120.197 (Notifying SBA’s Office of Inspector General of suspected fraud).



**Recommendation 2:** EXIM’s Office of Small Business, Business Credit Division, should include mandatory reporting language in the Working Capital Guarantee Program Master Guarantee Agreement that requires EXIM lenders to notify EXIM OIG, along with EXIM, of known or suspected fraud related to EXIM loan guarantees.

## RECOMMENDATIONS

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OIG provided a draft of this report to EXIM stakeholders for their review and comment on the findings and recommendations. OIG issued the following recommendations to EXIM. The agency’s complete response can be found in Appendix C.

**Recommendation 1:** EXIM’s Office of Small Business, Business Credit Division, should amend the language in Section 4.07 of EXIM’s Working Capital Guarantee Program Master Guarantee Agreement to specifically reference EXIM OIG as having authority to access EXIM lender records.

**Management Response:** In its January 22, 2024, response, EXIM concurred with the recommendation.

**OIG Reply:** OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation that EXIM has amended the language in Section 4.07 of EXIM’s Working Capital Guarantee Program Master Guarantee Agreement to specifically reference EXIM OIG as having authority to access EXIM lender records.

**Recommendation 2:** EXIM’s Office of Small Business, Business Credit Division, should include mandatory reporting language in the Working Capital Guarantee Program Master Guarantee Agreement that requires EXIM lenders to notify EXIM OIG, along with EXIM, of known or suspected fraud related to EXIM loan guarantees.

**Management Response:** In its January 22, 2024, response, EXIM concurred with the recommendation.

**OIG Reply:** OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation that EXIM has included mandatory reporting language in the Working Capital Guarantee Program Master Guarantee Agreement that requires EXIM lenders to notify EXIM OIG, along with EXIM, of known or suspected fraud related to EXIM loan guarantees.

## APPENDIX A: OBJECTIVES, SCOPE, AND METHODOLOGY

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OIG conducted this review from May 19, 2023, to August 25, 2023, in accordance with the *Quality Standards for Federal Offices of Inspector General (Silver Book)*, as issued in August 2012 by the Council of the Inspectors General on Integrity and Efficiency.

### **Objectives and Scope**

The Export-Import Bank of the United States (EXIM) Office of Inspector General (OIG) reviewed EXIM's Working Capital Guarantee Program Master Guarantee Agreement (MGA) to determine whether the MGA should explicitly reference OIG's statutory authority to access the records of EXIM lenders and require such lenders to notify OIG of known or suspected fraud.

### **Methodology**

EXIM OIG conducted portions of this review remotely and relied on audio- and video-conferencing tools. EXIM OIG used professional judgment and analyzed pertinent records to develop its findings, conclusions, and actionable recommendations.

## APPENDIX B: FEDERAL AGENCY EXAMPLES

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### Federal Agencies that Expressly Reference OIG's Authority to Access Records

- Department of Agriculture 7 C.F.R. 3565 (Oversight and Monitoring)
- Department of Defense (Corps of Engineers, Department of the Army) 33 C.F.R. 386.13 (Closing on the Loan Agreement or Loan Guarantee Agreement)
- Department of Education 34 C.F.R. 668.23 (Compliance audits and audited financial statements)
- Department of Energy 10 C.F.R. 600.331 (Requirements)
- Department of Health and Human Services, Health Resources and Services Administration (Health Care Facility Loan Guarantee Program Loan Guarantee Agreement)
- Department of Labor 29 C.F.R. 96.41 (Access to records)
- Department of Transportation 49 C.F.R. 22.29 (DOT access to participating lenders files)
- Department of the Treasury 12 C.F.R. 1808.610 (Covenants of Qualified Issuer with respect to Guarantee) (CDFI guarantee agreement includes such inspection rights for OIG)
- Federal Emergency Management Agency, Department of Homeland Security 44 C.F.R. 295.35
- Small Business Administration 13 C.F.R. 109.500 (SBA access to ILP Intermediary files)
- U.S. Postal Service 39 C.F.R. 230.2 (Access to information and other responsibilities)

### Federal Agencies/Authorities that Require or are Expected to Require Entities to Notify OIG of Known or Suspected Fraud

- Department of Education 34 C.F.R. 668.16 (Standards of administrative capacity)
- Department of the Treasury 12 C.F.R. 1808.627 (Fraud, waste and abuse)
- Federal Acquisition Rule 52.203-13 requires a government contractor to timely disclose, in writing, to the agency Office of Inspector General whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of the Civil False Claims Act or a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity in connection with the award, performance, or closeout of a government contract or any related subcontract.
- Housing and Urban Development (HUD) has proposed rules that would revise the regulations governing the Section 184 Indian Home Loan Guarantee Program (Section 184 Program) to fiscally strengthen the program by clarifying rules for lenders, tribes, and borrowers. A key provision is the establishment of a quality control plan aimed at ensuring lender's compliance of the Section 184 program requirements and protect HUD and the lender from unacceptable or unreasonable risks. One of the requirements for the quality control plan is that lenders must refer "any suspected fraud or material misrepresentation by any party whatsoever directly to HUD's Office of Inspector General (OIG) and the Office of Native American Programs."

- Small Business Administration 13 C.F.R. 120.197 (Notifying SBA's Office of Inspector General of suspected fraud)

## APPENDIX C: MANAGEMENT RESPONSE



Helping American Businesses Win the Future

**DATE:** January 22, 2024  
**TO:** The Honorable Parisa Salehi, Inspector General  
**THROUGH:** Ravi Singh, Acting Senior Vice President and Chief Financial Officer  
**FROM:** Courtney Chung, Senior Vice President and Chief Management Officer  
**SUBJECT:** EXIM Management Response to the draft Report,  
Management Advisory: *EXIM's Working Capital Guarantee Program Master  
Guarantee Agreement* (OIG-O-24-02), dated December 12, 2023

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by COURTNEY  
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Dear Inspector General Salehi,

Thank you for providing the Export-Import Bank of the United States (“EXIM” or “EXIM Bank”) with the Office of Inspector General’s (“OIG”) Management Advisory: *EXIM's Working Capital Guarantee Program Master Guarantee Agreement* (OIG-O-24-02), dated December 12, 2023 (the “Report”). EXIM’s management continues to support the work of your office, which complements EXIM’s efforts to continually improve its processes. We are proud of the strong and cooperative relationship between our offices.

EXIM Bank appreciates the OIG informing EXIM’s management team about concerns identified during OIG’s review of the Master Guarantee Agreement (MGA) issued under EXIM’s Working Capital Guarantee Program (WCGP).

EXIM concurs with the Report’s recommendations. We are grateful for your continued efforts to ensure that EXIM operates effectively and that EXIM funds are safeguarded against waste, fraud, and abuse.

**Recommendation 1:** EXIM’s Office of Small Business, Business Credit Division, should amend the language in Section 4.07 of EXIM’s Working Capital Guarantee Program Master Guarantee Agreement to specifically reference EXIM OIG as having authority to access EXIM lender records.

**Management Response:** EXIM concurs with this recommendation. EXIM shall amend the text of MGA Section 4.07 in the WCGP to explicitly refer to EXIM OIG as having the authority to access lender records. Additionally, EXIM will disseminate the updated MGA to all lenders including delegated authority lenders), notifying them of the changes and requesting their acceptance of the changes.

**Recommendation 2:** EXIM's Office of Small Business, Business Credit Division, should include mandatory reporting language in the Working Capital Guarantee Program Master Guarantee Agreement that requires EXIM lenders to notify EXIM OIG, along with EXIM, of known or suspected fraud related to EXIM loan guarantees.

**Management Response:** EXIM concurs with this recommendation. EXIM shall amend the text of WCGP MGA, such as Section 4.11 and other sections of the MGA if applicable, to explicitly require lenders to notify EXIM OIG, along with EXIM, of known or suspected fraud related to EXIM loan guarantees. Additionally, EXIM will disseminate the updated MGA to all lenders (including delegated authority lenders), notifying them of the changes and requesting their acceptance of the changes.

EXIM staff and management have appreciated the opportunity to work with you throughout your review. We are grateful for your continued efforts to ensure that EXIM operates effectively and that EXIM funds are safeguarded against waste, fraud, and abuse.

**CC:**

The Honorable Reta Jo Lewis, President and Chair of the Board of Directors  
Brad Belzak, Senior Vice President and Chief of Staff  
Hazeen Ashby, Deputy Chief of Staff and White House Liaison  
Larry Decker, Senior Advisor to the President and Chair  
Kenneth Tinsley, Senior Vice President and Chief Risk Officer  
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Erin Staton, Assistant General Counsel  
Lark Grier-Hapli, Deputy General Counsel  
Michaela Smith, Director of Audit and Internal Controls Program

## ABBREVIATIONS

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CDFI	Community Development Financial Institutions
C.F.R.	Code of Federal Regulations
DAL	Delegated Authority Lender
EXIM	Export-Import Bank of the United States
GAO	Government Accountability Office
HRSA	Health Resources and Services Administration
MGA	Master Guarantee Agreement
OBAF	Office of Board Authorized Finance
OGC	Office of General Counsel
OIG	Office of Inspector General
SBA	Small Business Administration
WCGP	Working Capital Guarantee Program

## OIG REVIEW TEAM MEMBERS

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