



# Management Advisory: Lack of Clarity in EXIM's Conduct, Performance, and Discipline Policy



OIG-O-24-07  
March 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: Review of EXIM's Conduct, Performance, and Discipline Policy (Report No. OIG-O-24-07)

Date: March 25, 2024

MICHAEL RYAN  
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MICHAEL RYAN  
Date: 2024.03.25  
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This final report presents the results of our review of EXIM's Conduct, Performance, and Discipline Policy (OP-OHC-2022.08) ("policy," dated March 2, 2023). The objective was to assess the clarity, equity, and applicability of the policy; the cause for the policy's exclusions of employees on temporary appointments, e.g., Schedule C appointees, interns, and employees on a probationary status; and whether supplemental guidance exists to address any policy gaps.

This report contains one recommendation. 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 EXIM’s Conduct, Performance, and Discipline Policy (OP-OHC-2022.08) (“policy,” dated March 2, 2023) to assess the clarity, equity, and applicability of the policy; the cause for the policy’s exclusions of employees on temporary appointments, e.g., Schedule C appointees, interns, and employees on a probationary status; and whether supplemental guidance exists to address any policy gaps. OIG found that the policy does not establish the standards of conduct, as per its stated purpose, and contains language that excludes some employees—including Schedule C political appointees—from coverage.<sup>2</sup> This lack of clarity and exclusion may impede the agency’s ability to manage its workforce equitably and achieve its mission. OIG determined that EXIM’s policy review process did not ensure the policy fully met its intended purpose.

OIG issued one recommendation to clarify the policy’s language. During the agency’s review of this report, EXIM concurred with the recommendation.

## BACKGROUND

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EXIM issued a revised Conduct, Performance, and Discipline Policy on March 2, 2023.<sup>3</sup> According to section 1.1, the policy’s purpose is to establish the standards of conduct for EXIM employees and the procedures for holding employees accountable for misconduct, poor performance, and other matters. As part of its oversight of EXIM, OIG identified a potential inconsistency in the policy that may exempt certain employees—most notably Schedule C political appointees—from the policy’s standards of conduct. OIG initiated this review to assess the clarity, equity, and applicability of the policy and determine whether supplemental guidance exists to address any policy gaps.

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<sup>1</sup> EXIM OIG is an independent 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> According to the Office of Personnel Management’s “Privacy Impact Assessment for the Executive and Schedule C System (ESCS),” July 22, 2021, “a Schedule C appointment is a type of political appointment in the Federal Government for those who serve in confidential, or policy roles immediately subordinate to other appointees. Most Schedule C employees are confidential assistants, policy experts, special counsel, and schedulers, however some do serve in specialized non-policy support roles.”

<sup>3</sup> EXIM officials advised that the Conduct, Performance, and Discipline Policy was updated on March 2, 2023, because it was overdue for revision. The previous version of the policy was published August 28, 2018.

## FINDING

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### **EXIM's Conduct, Performance, and Discipline Policy Does Not Clearly Establish Standards of Conduct as Intended and Contains Language That Excludes Some Employees from Coverage**

OIG found that EXIM's 2023 Conduct, Performance, and Discipline Policy does not clearly establish the standards of conduct as intended for all EXIM employees. The policy's purpose (section 1.1) is to establish standards of conduct as well as procedures for holding employees accountable. However, the only information regarding the policy's standards of conduct is contained in section 1.3. This section states that employees are expected to maintain high standards of professionalism, conduct, and performance in accordance with all EXIM rules and expectations, merit systems principles, and the standards of ethical conduct. Beyond this reference, the policy does not establish or define EXIM's standards of conduct. Instead, the policy focuses on EXIM's disciplinary processes for addressing misconduct, poor performance, or other issues.

Further, OIG found that the policy excludes some employees from coverage in its entirety—both the standards of conduct and the disciplinary process. Specifically, section 4.1 of the policy initially states that it applies to all EXIM employees; however, the policy then excludes temporary employees—including Schedule C political appointees—from coverage. This exclusion conflicts with part of the policy's purpose (section 1.1) to establish standards of conduct for EXIM employees. This exclusion is particularly troubling because political appointees often hold higher-graded positions with authority over policies, resources, and operations. Additionally, such employees are typically held to higher ethics and conduct standards.<sup>4</sup>

The Code of Federal Regulations (C.F.R.) requires all federal employees to respect and adhere to the principles of ethical conduct to ensure citizens have confidence in the integrity of the Federal Government.<sup>5</sup> Further, 5 C.F.R. Part 2635 requires federal employees to comply with supplemental agency regulations. EXIM's Code of Business Conduct and Ethics (code), adopted on April 2020, establishes the agency's supplemental guidance and principles for ethical decision-making and conduct.<sup>6</sup> EXIM requires all employees and members of the Board of Directors, regardless of appointment type, to follow the letter and spirit of this code as well as applicable EXIM policies and procedures. However, the policy does not identify or reference the code. Additionally, the code and policy are not aligned due to the policy's exclusion of temporary employees.

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<sup>4</sup> For example, Executive Order 13989 requires all presidential appointees to sign an ethics pledge.

<sup>5</sup> 5 C.F.R. § 2635 (Standards of Ethical Conduct for Employees of the Executive Branch).

<sup>6</sup> EXIM's Code of Business Conduct and Ethics, April 14, 2020.

### ***EXIM’s Review and Coordination of the Draft Conduct, Performance, and Discipline Policy Did Not Identify the Policy’s Lack of Clarity***

EXIM’s policy review and coordination process did not identify the lack of clarity in EXIM’s Conduct, Performance, and Discipline Policy, described above. Specifically, EXIM’s Approval and Maintenance of Administrative Policies, dated August 22, 2016, establishes requirements for the drafting, review, approval, publication, and maintenance of administrative policies. Additionally, this policy requires that draft policies be coordinated with EXIM’s Office of General (OGC), Senior Vice Presidents (SVPs), and other appropriate agency reviewing officials before the policy is approved and published. Furthermore, the policy defines OGC’s responsibilities for reviewing draft policies. Specifically, section 6.1.3.3 requires OGC to ensure the policy is consistent with other EXIM Bank policies, directives, or other authorities. In addition, section 6.1.3.4. states that OGC must review draft policies for “effectiveness in meeting the purposes to be served.” However, OGC did not identify the policy’s lack of clarity in establishing standards of conduct or referencing EXIM’s code, as well as the exclusion of temporary employees from the policy in its entirety.

OIG determined that EXIM followed the established review and coordination process in its 2023 update to the Conduct, Performance, and Discipline Policy as the draft policy was coordinated with EXIM’s OGC, Office of Ethics, and all SVPs.<sup>7</sup> However, EXIM reviewing officials who OIG interviewed could not provide a reason for excluding temporary employees as it relates to the policy’s intended purposes to establish standards of conduct. Moreover, another EXIM reviewing official told OIG that they did not comprehensively review the policy’s applicability. Further, an OIG review of coordinated copies of the draft policy revealed that EXIM reviewing officials did not provide any comments on the policy’s applicability.

OIG recognizes disciplinary measures may vary based on an employee’s appointment status.<sup>8</sup> However, the exclusion of temporary employees from this policy does not meet part of its intended purpose to establish standards of conduct for EXIM employees and may create ambiguity with the policy. Additionally, the policy’s lack of clearly defined standards of conduct may impede the agency’s ability to manage its workforce equitably and achieve its mission.

**Recommendation:** EXIM’s Office of Human Capital, in coordination with the Office of General Counsel, should revise the Conduct, Performance, and Discipline Policy to either define the standards of conduct or cite EXIM’s Code of Business Conduct and Ethics, as well

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<sup>7</sup> The previous version EXIM’s Conduct Performance, and Discipline Policy was updated in 2018. The 2018 version excluded political appointees and employees from being removed or demoted during a probationary period. The 2023 policy expanded on the 2018 policy’s exclusions by adding all employees on temporary appointments, including interns and members of the Board of Directors.

<sup>8</sup> For example, according to the Office of Personnel Management’s report to Congress, “Temporary Employment in the Federal Government” (September 2013), “temporary employees are not entitled to procedural protections from adverse actions or reductions in force. As a condition of employment, they can be separated from employment with minimal notice and with no appeal rights.”

as clarify policy language, to ensure that all EXIM employees are held to the same standards of conduct, regardless of the employee's appointment status.

## RECOMMENDATION

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OIG provided a draft of this report to EXIM stakeholders for their review and comment on the finding and recommendation. OIG issued the following recommendation to EXIM. The agency's complete response can be found in Appendix B.

**Recommendation:** EXIM's Office of Human Capital, in coordination with the Office of General Counsel, should revise the Conduct, Performance, and Discipline Policy to either define the standards of conduct or cite EXIM's Code of Business Conduct and Ethics as well as clarify policy language to ensure that all EXIM employees are held to the same standards of conduct, regardless of the employee's appointment status.

**Management Response:** In its March 22, 2024, response, EXIM concurred with this recommendation.

**OIG Reply:** OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation that EXIM revised its Conduct, Performance, and Discipline Policy to either define the standards of conduct or cite EXIM's Code of Business Conduct and Ethics, as well as clarify the policy's language to hold all employees to the same standards of conduct.

## APPENDIX A: OBJECTIVES, SCOPE, AND METHODOLOGY

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OIG conducted this review from January 18, 2024, to February 20, 2024, 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) assessed the clarity, equity, and applicability of the policy; the cause for the policy's exclusions of employees on temporary appointments, e.g., Schedule C appointees, interns, and employees on a probationary status; and whether supplemental guidance exists to address any policy gaps.

### **Methodology**

OIG conducted portions of this engagement remotely and relied on audio- and video-conferencing tools to interview EXIM personnel. OIG used professional judgment and analyzed documentary and testimonial evidence to develop its findings, conclusions, and actionable recommendations.

## APPENDIX B: MANAGEMENT RESPONSE



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**DATE:** March 22, 2024

**TO:** Mr. Michael Ryan, Assistant Inspector General for Special Reviews and Communications

**THROUGH:** Ravi Singh, Acting Senior Vice President and Chief Financial Officer **RAVI SINGH** Digitally signed by RAVI SINGH Date: 2024.03.22 14:54:21 -04'00'

**FROM:** Courtney Chung, Senior Vice President and Chief Management Officer **COURTNEY CHUNG** Digitally signed by COURTNEY CHUNG Date: 2024.03.22 14:38:16 -04'00'

Michelle Arias, Chief Human Capital Officer **MICHELLE ARIAS** Digitally signed by MICHELLE ARIAS Date: 2024.03.22 11:29:25 -04'00'

Susan Gerson, Assistant General Counsel For Administrative Law **SUSAN GERSON** Digitally signed by SUSAN GERSON Date: 2024.03.22 12:09:40 -04'00'

**SUBJECT:** EXIM Management Response to the Draft Report  
*Management Advisory: Lack of Clarity in EXIM's Conduct, Performance, and Discipline Policy (Report No. OIG-O-24-07)*

Dear Mr. Ryan,

Thank you for providing the Export-Import Bank of the United States (“EXIM” or “EXIM Bank”) management with the Office of Inspector General’s (“OIG”) *Lack of Clarity in EXIM's Conduct, Performance, and Discipline Policy (Report No. OIG-O-24-07)*, dated March 15, 2024 (the “Report”). EXIM’s leadership and management continue to fully support the OIG’s work, which we believe complements and enhances EXIM’s efforts to continually improve its processes. EXIM Bank is proud of the strong and cooperative relationship it has with the OIG.

EXIM Bank appreciates the OIG’s research of EXIM’s Conduct, Performance, and Discipline Policy and the recommendation made around clarifying the language in the policy.

EXIM's response to the recommendation in this report is as follows:

**Recommendation 1:** EXIM’s Office of Human Capital, in coordination with the Office of General Counsel, should revise the Conduct, Performance, and Discipline Policy to either define the standards of conduct or cite EXIM’s Code of Business Conduct and Ethics as well as clarify policy language to ensure that all EXIM employees are held to the same standards of conduct, regardless of the employee's appointment status.

**Management response:** EXIM concurs with this recommendation. EXIM’s Office of Human Capital, in coordination with the Office of General Counsel, will revise the Conduct, Performance, and Discipline Policy to either define the standards of conduct or cite EXIM’s Code of Business Conduct

and Ethics as well as clarify policy language to ensure that all EXIM employees are held to the same standards of conduct, regardless of the employee's appointment status.

We look forward to our continued strengthening of our working relationship and working closely with the Office of the Inspector General.

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 of the Board of Directors  
Michelle Arias, Chief Human Capital  
James Coughlan, Senior Vice President and General Counsel  
Michaela Smith, Director of Audit and Internal Controls Programs

## APPENDIX C: ABBREVIATIONS

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C.F.R.	Code of Federal Regulations
EXIM	Export-Import Bank of the United States
ESCS	Privacy Impact Assessment for the Executive and Schedule C System
OGC	Office of General Counsel
OIG	Office of Inspector General
SVPs	Senior Vice Presidents (SVPs)

## APPENDIX D: OIG REVIEW TEAM MEMBERS

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[oig.whistleblower@exim.gov](mailto:oig.whistleblower@exim.gov)

For additional resources and information about whistleblower protections and unlawful retaliation, please visit the [whistleblower's resource page](#) at [oversight.gov](https://oversight.gov)