



# Management Alert:

## EXIM Has Not Fully Complied with Antideficiency Act Reporting Requirements



OIG-O-23-04  
September 29, 2023

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



## Management Alert

To: Courtney Chung  
Chief Management Officer

From: Eric Rivera  
Assistant Inspector General for Audits

Subject: Management Alert (OIG-O-23-04): EXIM Has Not Fully Complied with Antideficiency Act Reporting Requirements

Date: September 29, 2023

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OIG found that the Export-Import Bank of the United States (EXIM) has not reported an Antideficiency Act (ADA) violation in accordance with requirements outlined in 31 U.S.C. § 1517(b). Specifically, the ADA requires that the agency head report such violations immediately to the President and Congress.<sup>1</sup> As described below, Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission, and Execution of the Budget* (August 2023) includes specific guidance on how agencies should report an ADA violation. OIG determined that EXIM has yet to complete its reporting of an ADA violation that it initially reported to the OMB in fiscal year 2021.

### Context

The ADA prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation, in excess of an apportionment, and from accepting voluntary services. Federal employees who violate the ADA are subject to administrative and/or penal sanctions. Employees may be subject to appropriate administrative discipline including suspension from duty without pay or removal from office when circumstances warrant.

An agency head must report immediately to the President and Congress once it is determined that there has been a violation of the ADA, including all relevant facts and a statement of actions taken. In addition, the head of the agency transmits a copy of each report to the Comptroller General on the same date the report is transmitted to the President and Congress.<sup>2</sup> OMB Circular A-11 provides specific guidance on how to report an ADA violation. The Circular instructs agencies with a potential violation to consult with their OMB representative and to

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<sup>1</sup> 31 U.S.C. § 1517(b).

<sup>2</sup> *Id.*

clear the agency report package through OMB prior to submitting the required letters to the President, Congress, and the Comptroller General.<sup>3</sup>

## **EXIM Management Identifies an Antideficiency Act Violation**

In FY 2021, EXIM officials identified an ADA violation involving a transaction approved in 2019. The EXIM Board of Directors approved a \$5 billion direct loan for a liquid natural gas facility in Mozambique on September 26, 2019. That same day, EXIM proceeded to record an obligation for this \$5 billion direct loan amount. EXIM had sufficient borrowing authority from the Treasury Department to cover the obligation at the time it was recorded. However, there was not an approved apportionment to cover the full direct loan amount at the time the obligation was recorded. In FY 2021, EXIM concluded that this transaction constituted an ADA violation and notified OMB accordingly on September 8, 2021. EXIM's September 8, 2021, notification to OMB included a draft of the notifications to the President, Congress, and the Comptroller General. The communication to OMB also included an EXIM General Counsel concurring legal opinion dated September 1, 2021. As of the date of this report, EXIM officials told OIG that the agency has not received OMB clearance to complete its reporting obligation under the ADA and OMB Circular A-11.

## **EXIM Management has not Completed the Reporting of this Antideficiency Act Violation**

Despite notifying OMB of the ADA violation, EXIM has not complied with its statutory requirement to report such violations to the President, Congress, and the Comptroller General. More than two years have elapsed since EXIM first notified OMB of the violation, but the statutory reporting requirements have not been completed. EXIM officials told OIG they have been in communication with OMB on the matter but were not able to provide documentary evidence of such conversations. The officials also told OIG that the agency's OMB representative changed several times during the past two years. Lastly, EXIM officials stated to OIG that the current Chair of EXIM was notified during her confirmation process and has been briefed on the matter after her confirmation.

After reviewing a draft of this management alert, EXIM management informed OIG that the agency is undertaking an internal inquiry to make a final determination as to whether an ADA violation occurred.

Not completing the ADA reporting process limits the effectiveness of oversight by key stakeholders, including Congress and the Comptroller General because they were not informed

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<sup>3</sup> An agency's report package must contain (1) a transmittal letter to the Director of OMB; (2) a letter to the President; (3) letters to the House of Representatives and the Senate; and (4) a letter to the Comptroller General. Section 145.7 of OMB Circular A-11.

of the violation. In addition, not having a process for reporting infractions increases EXIM's risk of additional ADA violations.

### **Recommendations:**

During the agency's review of a draft of this report, EXIM officials indicated that they are conducting an internal inquiry to determine if an ADA violation occurred. Pending the completion of the inquiry, OIG recommends that the Chief Management Officer:

1. Coordinate with OMB, and if necessary, obtain clearance for EXIM to immediately report the 2019 Antideficiency Act violation the agency identified, consistent with 31 U.S.C. § 1517(b) and the requirements of OMB Circular A-11.
2. If applicable, and after obtaining clearance from OMB, EXIM's President and Chair should immediately report the 2019 Antideficiency Act violation the agency identified to the President, Congress, and the Comptroller General, consistent with 31 U.S.C. § 1517(b).
3. Formally document EXIM's internal processes for maintaining records and reporting future Antideficiency Act violations to all required parties in a timely manner.

In its September 29, 2023, response (attached to this report), EXIM concurred with the four recommendations. OIG considers the recommendations resolved. The recommendations can be closed when OIG receives and reviews the documentation supporting the implementation of the recommended actions.

## EXIM Management Response



Helping American Businesses Win the Future

**DATE:** September 29, 2023

**TO:** The Honorable Parisa Salehi, Inspector General, Office of Inspector General

**FROM:** Courtney Chung, Senior Vice President and Chief Management Officer

**SUBJECT:** EXIM Management Response to the draft Management Alert  
*EXIM Has Not Fully Complied with Antideficiency Act Reporting Requirements (OIG-O-23-04)*, Dated September 29, 2023

COURTNEY  
CHUNG  
Digitally signed by  
COURTNEY CHUNG  
Date: 2023.09.28  
17:03:33 -0400

Dear Ms. Salehi,

Thank you for providing the Export-Import Bank of the United States (“EXIM” or “EXIM Bank”) management with the Office of Inspector General’s Management Alert (“OIG”) *EXIM Has Not Fully Complied with Antideficiency Act Reporting Requirements (OIG-O-23-04)* dated September 29, 2023 (the “Alert”). Management continues to support the OIG’s work, which complements EXIM’s efforts to continually improve its processes. EXIM Bank is proud of the strong and cooperative relationship it has with the OIG.

We agree with the recommendations and thank the OIG for its effort to ensure EXIM’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 the continued strengthening of the working relationship between EXIM and the Office of the Inspector General.

**Recommendation 1:** Coordinate with OMB, and if necessary, obtain clearance for EXIM to immediately report the 2019 Antideficiency Act violation the agency identified, consistent with 31 U.S.C. § 1517(b) and the requirements of OMB Circular A-11.

**Management response:**

EXIM concurs with this recommendation and will coordinate with OMB as appropriate.

**Recommendation 2:** If applicable, and after obtaining clearance from OMB, EXIM’s President and Chair should immediately report the 2019 Antideficiency Act violation the agency identified to the President, Congress, and the Comptroller General, consistent with 31 U.S.C. § 1517(b).

**Management response:**

EXIM concurs with this recommendation and, if applicable, upon OMB clearance, will take the necessary steps to complete ADA reporting

**Recommendation 3:** Formally document EXIM's internal processes for maintaining records and reporting future Antideficiency Act violations to all required parties in a timely manner.

**Management response:**

EXIM concurs with this recommendation and will formally document EXIM's internal process for ADA reporting.

**CC: RELEVANT BUSINESS PARTIES**

The Honorable Reta Jo Lewis, President and Chair of the Board of Directors  
Hazeen Ashby, Senior Vice President and Acting Chief of Staff  
Larry Decker, Senior Advisor to the President and Chair, and Acting Deputy Chief of Staff  
Jonathan Feigelson, Senior Vice President and General Counsel  
Lark Grier-Hapli, Senior Vice President and Deputy General Counsel  
Susan Gerson, Assistant General Counsel for Administrative Law  
Mary Buhler, Senior Vice President and Chief Financial Officer  
Inci Tonguch-Murray, Senior Vice President and Deputy Chief Financial Officer  
Tomeka Wray, Vice President of Operations  
Kenneth Tinsley, Senior Vice President and Chief Risk Officer  
Derek Kitchen, Deputy Director of Congressional and Intergovernmental Affairs  
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[oig.whistleblower@exim.gov](mailto:oig.whistleblower@exim.gov)

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