

Comparing the base document H.R. 4863, as reported, with the Rules Committee Print 116-36

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Omitted text is shown **stricken**, new matter that is proposed is in ***underlined italics***, and existing text in which no change is being proposed is shown in regular roman. Typesetting and stylistic characteristics, particularly in the headings and indentations, may not conform to how the text, if adopted, would be illustrated in subsequent versions of legislation or public law.

Section 1. Short title

This Act may be cited as the "United States Export Finance Agency Act of 2019".

Sec. 2. Table of contents

The table of contents of this Act is as follows:

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Sec. 3. Renaming of the Export-Import Bank of the United States

(a) **IN GENERAL.**— The Export-Import Bank of the United States is hereby redesignated as the United States Export Finance Agency.

(b) **REFERENCES.**— Any reference to the Export-Import Bank of the United States in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of the enactment of this Act is deemed a reference to the United States Export Finance Agency.

Sec. 4. Authorization period

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking "2019" and inserting "2029".

Sec. 5. Aggregate loan, guarantee, and insurance authority

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended to read as follows:

"(2) **APPLICABLE AMOUNT DEFINED.**— In this subsection, the term 'applicable amount' means—

"(A) \$145,000,000,000 for fiscal year 2020;

"(B) \$150,000,000,000 for fiscal year 2021;

- "(C) \$155,000,000,000 for fiscal year 2022;
 "(D) \$160,000,000,000 for fiscal year 2023;
 "(E) \$165,000,000,000 for fiscal year 2024;
 "(F) \$170,000,000,000 for fiscal year 2025; and
 "(G) \$175,000,000,000 for each of fiscal years 2026 through 2029."

Sec. 6. Office of Minority and Women Inclusion

(a) IN GENERAL.—

Section 3(i) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(i)) is amended to read as follows:

"(i) OFFICE OF MINORITY AND WOMEN INCLUSION.—

"(1) ESTABLISHMENT.— The Agency shall establish an Office of Minority and Women Inclusion which shall be responsible for carrying out this subsection and all matters relating to diversity in management, employment, and business activities in accordance with such standards and requirements as the Director of the Office shall establish.

"(2) TRANSFER OF RESPONSIBILITIES.— The Agency shall ensure that, to the extent that the responsibilities described in paragraph (1) (or comparable responsibilities) were, as of the date of the enactment of this subsection, performed by another office of the Agency, the responsibilities shall be transferred to the Office.

"(3) DUTIES WITH RESPECT TO CIVIL RIGHTS LAWS.— The responsibilities described in paragraph (1) shall not include enforcement of statutes, regulations, or executive orders pertaining to civil rights, except that the Director of the Office shall coordinate with the President of the Agency, or the designee of the President of the Agency, regarding the design and implementation of any remedies resulting from violations of the statutes, regulations, or executive orders.

"(4) DIRECTOR.—

"(A) IN GENERAL.— The Director of the Office shall be appointed by, and shall report directly to, the President of the Agency. The position of Director of the Office shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code, or an equivalent designation.

"(B) DUTIES.— The Director shall—

"(i) develop standards for equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the Agency;

"(ii) develop standards for increased participation of minority-owned and women-owned businesses in the programs and contracts of the Agency, including standards for coordinating technical assistance to the businesses; and

"(iii) enhance the outreach activities of the Agency with respect to, and increase the total amount of loans, guarantees, and insurance provided by the Agency to support exports by socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act) and small business concerns owned by women.

"(C) OTHER DUTIES.— The Director shall advise the President of the Agency on the impact of the policies of the Agency on minority-owned and women-owned businesses.

"(5) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

"(A) CONTRACTS.— The Director of the Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) in all business and activities of the Agency at all levels, including in procurement, insurance, and all types of contracts. The processes established by the Agency for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

"(B) APPLICABILITY.— This paragraph shall apply to all contracts for services of any kind, including all contracts for all business and activities of the Agency, at all levels.

"(C) OUTREACH.— The Agency shall establish a minority outreach program to ensure the inclusion (to the maximum extent practicable) of contracts entered into with the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

"(6) DIVERSITY IN AGENCY WORKFORCE.— The Agency shall take affirmative steps to seek diversity in its workforce at all levels of the Agency consistent with the demographic diversity of the United States, in a manner consistent with applicable law, including—

"(A) to the extent the Agency engages in recruitment efforts to fill vacancies—

"(i) recruiting at historically Black colleges and universities, Hispanic-serving institutions, Tribal colleges and universities, women's colleges, and colleges that typically serve majority minority populations; and

"(ii) recruiting at job fairs in urban communities, and placing employment advertisements in print and digital media oriented toward women and people of color;

"(B) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

"(C) by use of any other mass media communications that the Director of the Office determines necessary."

(b) INCLUSION IN ANNUAL REPORT.—

Section 8 of such Act (12 U.S.C. 635g) is amended by adding at the end the following:

"(I) OFFICE OF MINORITY AND WOMEN INCLUSION.—

"(1) IN GENERAL.— The Agency shall include in its annual report to the Congress under subsection (a) a report from the Office of Minority and Women Inclusion regarding the actions taken by the Agency and the Office pursuant to section 3(i), which shall include—

"(A) a statement of the total amounts paid by the Agency to contractors since the most recent report under this subsection;

"(B) the percentage of the amounts described in subparagraph (A) that were paid to contractors as described in section 3(i)(5)(A);

"(C) the successes achieved and challenges faced by the Agency in operating minority and women outreach programs;

"(D) a description of the progress made by the Agency in supporting exports by minority-owned small business concerns and the progress made by the Agency in supporting small business concerns owned by women, including estimates of the amounts made available to finance exports directly by both categories of small business concerns, a comparison of these amounts with the amounts made available to all small business concerns, and a comparison of such amounts with the amounts so made available during the 2 preceding years;

"(E) the challenges the Agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

"(F) any other information, findings, conclusions, and recommendations for legislative or Agency action, as the Director of the Office deems appropriate.

"(2) DEFINITIONS.— In this subsection:

"(A) MINORITY-OWNED SMALL BUSINESS CONCERN.— The term 'minority-owned small business concern' has the meaning given the term 'socially and economically disadvantaged small business concern' under section 8(a)(4) of the Small Business Act.

"(B) SMALL BUSINESS CONCERN.— The term 'small business concern' has the meaning given that term under section 3(a) of the Small Business Act."

(c) CONFORMING AMENDMENT.— Section 8(f) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g(f)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively.

Sec. 7. Support for United States territories**(a) CREATION OF THE OFFICE OF TERRITORIAL EXPORTING.—**

Section 3 of the Export-Import Bank Act of 1945 (12 U.S.C. 635a) is amended by adding at the end the following:

"(n) OFFICE OF TERRITORIAL EXPORTING.—

"(1) IN GENERAL.— The President of the Agency shall establish an Office of Territorial Exporting, the functions of which shall be to—

"(A) promote the export of goods and services from the territories;

"(B) conduct outreach, education, and disseminate information concerning export opportunities and the availability of Agency support for such activities; and

"(C) increase the total amount of loans, guarantees, and insurance provided by the Agency benefitting the territories.

"(2) STAFF.— The President of the Agency shall hire such staff as may be necessary to perform the functions of the Office, including—

"(A) at least 1 staffer responsible for liaising with Puerto Rico and the United States Virgin Islands; and

"(B) at least 1 staffer responsible for liaising with the United States territories of Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

"(3) DEFINITION OF TERRITORY.— In this Act, the term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa."

(b) ANNUAL REPORT.—

Section 8 of such Act (12 U.S.C. 635g), as amended by section 6(b) of this Act, is amended by adding at the end the following:

"(m) REPORT ON ACTIVITIES IN THE TERRITORIES.— The Agency shall include in its annual report to Congress under subsection (a) a report on the steps taken by the Agency in the period covered by the report to increase—

"(1) awareness of the Agency and its services in the territories; and

"(2) the provision of Agency support to export businesses in the territories."

Sec. 8. Alternative procedures during quorum lapse

(a) IN GENERAL.— Section 3(c)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)(6)) is amended—

(1) by inserting "(A)" after "(6)"; and

(2) by adding at the end the following:

"(B)

"(i) If there is an insufficient number of directors to constitute a quorum under subparagraph (A) for 90 consecutive days during the term of a President of the United States, a temporary Board, consisting of the following members, shall act in the stead of the Board of Directors:

"(I) The United States Trade Representative,

"(II) The Secretary of the Treasury,

"(III) The Secretary of Commerce, and

"(IV) The members of the Board of Directors.

"(ii) If, at a meeting of the temporary Board—

"(I) a member referred to in clause (i)(IV) is present, the meeting shall be chaired by such a member, consistent with Agency bylaws; or

"(II) no such member is present, the meeting shall be chaired by the United States Trade Representative.

"(iii) A member described in subclause (I), (II), or (III) of clause (i) may delegate the authority of the member to vote on whether to authorize a transaction, whose value does not exceed \$100,000,000, to—

"(I) if the member is the United States Trade Representative, the Deputy United States Trade Representative; or

"(II) if the member is referred to in such subclause (II) or (III), the Deputy Secretary of the department referred to in the subclause.

"(iv) If the temporary Board consists of members of only 1 political party, the President of the United States shall, to the extent practicable, appoint to the temporary Board a qualified member of a different political party who occupies a position requiring nomination by the President, by and with the consent of the Senate.

"(v) The temporary board may not change or amend Agency policies, procedures, bylaws, or guidelines.

"(vi) The temporary Board shall expire at the end of the term of the President of the United States in office at the time the temporary Board was constituted or upon restoration of a quorum of the Board of Directors as defined in subparagraph (A).

"(vii) With respect to a transaction that equals or exceeds \$100,000,000, the Chairperson of the temporary Board shall ensure that the Agency complies with section 2(b)(3)."

(b) **TERMINATION.**— The amendments made by subsection (a) shall have no force or effect after the 10-year period that begins with the date of the enactment of this Act.

Sec. 9. Strengthening support for U.S. small businesses

(a) **SMALL BUSINESS POLICY.**—

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (E)(i)(I) and inserting the following:

"(E)

"(i)

"(I) It is further the policy of the United States to encourage the participation of small business (including women-owned businesses, minority-owned businesses, veteran-owned businesses, businesses owned by persons with disabilities, and businesses in rural areas) and start-up businesses in international commerce, and to educate such businesses about how to export goods using the United States Export Finance Agency."

(b) **OUTREACH.**—

(1) **PLAN.**— Within 120 days after the date of the enactment of this Act, the United States Export Finance Agency shall prepare and submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a comprehensive outreach plan to ensure that small business owners are aware of the financing options available to them through the Agency. The plan shall include—

(A) input from the Small Business Administration and statewide small business coalitions with operations in rural, urban, and suburban regions;

(B) an emphasis on outreach to businesses owned by women, minorities, veterans, and persons with disabilities; and

(C) a proposed budget for carrying out the plan during fiscal years 2020 through 2029, that provides for the spending of at least \$1,000,000 annually for outreach to small businesses.

(2) **IMPLEMENTATION.**— Section 2(b)(1)(E) of such Act (12 U.S.C. 635(b)(1)(E)) is amended by adding at the end the following:

"(xi) After consultation with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Agency shall implement the outreach plan referred to in section 9(b)(1) of the United States Export Finance Agency Act of 2019."

(c) **EXCLUSION OF UNUTILIZED INSURANCE AUTHORITY IN CALCULATING SMALL BUSINESS THRESHOLD.**— Section 2(b)(1)(E)(v) of such Act (12 U.S.C. 635(b)(1)(E)(v)) is amended by adding at the end the following: "For the purpose of calculating the amounts of authority required under this clause, the Agency shall, with respect to insurance, exclude unutilized authorizations that terminated during the fiscal year."

(d) INCREASE IN SMALL BUSINESS THRESHOLD.—

(1) IN GENERAL.— Section 2(b)(1)(E)(v) of such Act (12 U.S.C. 635(b)(1)(E)(v)) is amended by striking "25" and inserting "30".

(2) EFFECTIVE DATE.— The amendment made by paragraph (1) shall take effect on October 1, 2028.

Sec. 10. Enhancing flexibility to respond to predatory export financing by China

(a) DEEMING RULE UNDER TIED AID CREDIT PROGRAM.— Section 10(b)(5)(B)(i)(III) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3(b)(5)(B)(i)(III)) is amended by adding at the end the following new sentence: "The requirement that there be credible evidence of a history of a foreign export credit agency making offers not subject to the Arrangement is deemed met in the case of exports likely to be supported by official financing from the People's Republic of China, unless the Secretary of the Treasury has reported to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that China is in substantial compliance with the Arrangement."

(b) COLLABORATION WITH USDA ON EXPORT FINANCING PROGRAMS.— Section 13(1)(A) of such Act (12 U.S.C. 635i-7(1)(A)) is amended by inserting ", the Department of Agriculture," before "and other Federal agencies".

Sec. 11. Restriction on financing for certain entities

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

"(1) RESTRICTION ON FINANCING FOR CERTAIN ENTITIES.—

"(1) IN GENERAL.— Beginning on the date that is 180 days after the date of the enactment of this subsection, the Board of Directors may not approve a transaction that is subject to approval by the Board with respect to the provision by the Agency of any guarantee, insurance, or extension of credit, or the participation by the Agency in any extension of credit for which the end user, obligor, or lender is described in paragraph (2).

"(2) PROHIBITED END USER, OBLIGOR, OR LENDER.— An end user, obligor, or lender is described in this paragraph if the end user, obligor, or lender is known to the Agency to be:

"(A) The People's Liberation Army of the People's Republic of China.

"(B) The Ministry of State Security of the People's Republic of China.

"(C) Included on the Denied Persons List or the Entity List maintained by the Bureau of Industry and Security of the Department of Commerce.

"(D) Included on the Arms Export Control Act debarred list maintained by the Directorate of Defense Trade Controls of the Department of State.

"(E) Any person who has paid a criminal fine or penalty pursuant to a conviction or resolution or settlement agreement with the Department of Justice for a violation of the Foreign Corrupt Practices Act in the preceding 3 years.

"(F) A person who, in the preceding 3 years, appeared on the Annual Intellectual Property Report to Congress by the Intellectual Property Enforcement Coordinator in the Executive Office of the President, if the person was convicted in any court

"(3) DEFINITIONS.— In this subsection:

"(A) PERSON.— The term 'person' means an individual or entity.

"(B) ENTITY.— The term 'entity' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization."

Sec. 12. Prohibitions on financing for certain persons involved in sanctionable activities

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635), as amended by section 11 of this Act, is amended by adding at the end the following:

"(m) PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES.—

"(1) IN GENERAL.— Beginning on the date that is 180 days after the date of the enactment of this subsection, the Board of Directors of the Agency may not approve any transaction that is subject to approval by the Board with respect to the provision by the Agency of any guarantee, insurance, or extension of credit, or the participation by the Agency in any extension of credit, to a person in connection with the exportation of any good or service unless the person provides the certification described in paragraph (2).

"(2) CERTIFICATION DESCRIBED.— The certification described in this paragraph is a certification by a person who is an end user, obligor, or lender that neither the person nor any other person owned or controlled by the person engages in any activity in contravention of any United States law, regulation, or order applicable to the person concerning—

"(A) trade and economic sanctions, including an embargo;

"(B) the freezing or blocking of assets of designated persons; or

"(C) other restrictions on exports, imports, investment, payments, or other transactions targeted at particular persons or countries.

"(3) CERTIFICATION REQUIREMENTS.— The certification described in paragraph (2) shall be made after reasonable due diligence and based on best knowledge and belief."

Sec. 13. Promoting renewable energy exports, environmental and social standards, and accountability

(a) OFFICE OF FINANCING FOR RENEWABLE ENERGY, ENERGY EFFICIENCY AND ENERGY STORAGE EXPORTS.—

Section 2(b)(1)(C) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(C)) is amended to read as follows:

"(C) OFFICE OF FINANCING FOR RENEWABLE ENERGY, ENERGY EFFICIENCY AND ENERGY STORAGE.— The President of the Agency shall establish an office whose functions shall be to promote the export of goods and services to be used in the development, production, and distribution of renewable energy resources, and energy efficiency and energy storage technologies, and disseminate information concerning export opportunities and the availability of Agency support for such activities, to increase the total amount of loans, guarantees, and insurance provided by the Agency to support exports related to renewable energy, energy efficiency, and energy storage."

(b) ENVIRONMENTAL POLICY AND PROCEDURES.— Section 11(a) of such Act (12 U.S.C. 635i-5(a)) is amended

(1) in paragraph (1)—

(A) in the 2nd sentence, by inserting ", including to potentially impacted communities in the country in which the activity will be carried out, at least 60 days before the date of the vote," before "and supplemental";

(B) by inserting after the 2nd sentence the following: "The procedures shall include a requirement for an analysis of the environmental and social impacts, including worker impacts and anticipated health impacts and costs, of the proposed activity and of alternatives to the proposed activity, including mitigation measures, where appropriate."; and

(C) in the 3rd sentence, by striking "The preceding sentence" and inserting "This paragraph";

(2) by redesignating paragraph (2) as paragraph (7) and inserting after paragraph (1) the following:

"(2) CONSULTATIONS WITH POTENTIALLY IMPACTED COMMUNITIES.— In any credit or common terms agreements to which the Agency is a party relating to a transaction described in paragraph (1), the Agency shall include a provision to ensure that robust consultations with potentially impacted communities in the country in which the activity will be carried out have been and will continue to be carried out throughout the project cycle.

"(3) ENVIRONMENTAL AND SOCIAL DUE DILIGENCE PROCEDURES AND GUIDELINES REVIEW.— By the end of 2020 and once at the end of each subsequent 3-year period, the Board of Directors of the Agency shall complete a review of the Environmental and Social Due Diligence Procedures and Guidelines ensuring that the procedures and guidelines incorporate requirements for project consideration that are consistent to limit greenhouse gas emissions and, to the maximum extent possible, to affirm that the Board operates consistently with the multilateral environmental agreements to which the United States is a party that are directly related to transactions in which the Agency is involved.

"(4) The Agency shall operate consistently with Annex VI of the Arrangement on Officially Supported Export Credits, as adopted by the Organisation for Economic Co-operation and Development as of January 2019.

"(5) The Agency shall make publicly available the estimated amounts of CO₂ emissions expected to be produced from pending projects that the Agency has designated as Category A and B projects and work with other export credit agencies to encourage them to do the same.

"(A) The Agency shall report CO₂ emissions associated with projects that the Agency has designated as Category A and B fossil fuel projects in its annual report by product categories.

"(B) The Agency shall advocate within the OECD and other multilateral fora for the full reporting of CO₂ emissions associated with appropriate energy and non-energy projects including manufacturing and agriculture.

"(C) The Agency shall undertake periodic reviews with stakeholders to ensure that the Agency employs the most appropriate methodology of estimating and tracking the CO₂ emissions from Category A and B projects the Agency supports.

"(6) The Agency shall develop and maintain measures to provide increased financing support for evolving technologies that reduce CO₂ emissions.

"(A) The Agency shall develop and maintain measures to encourage foreign buyers to seek available, commercially viable technology to reduce the CO₂ footprint of projects.

"(B) The Agency shall develop and maintain initiatives to finance aspects of project development that reduce or mitigate CO₂ emissions, such as effective carbon capture and sequestration technology, while maintaining the competitiveness of United States exporters.

"(C) In coordination with the Department of the Treasury, the Agency shall advocate in international fora for the availability of financing incentives for low to net zero CO₂-emitting projects, a common methodology for evaluating and taking into account the social cost of carbon.

"(D) The Agency shall encourage export credit agencies and other relevant lending institutions to adopt similar CO₂ policies, including encouraging transparency and the involvement of stakeholders."; and

(3) in paragraph (7) (as so redesignated by paragraph (2) of this subsection), by striking "paragraph (1)" and inserting "this subsection".

(c) ANNUAL REPORT TO CONGRESS.—

Section 11(c) of such Act (12 U.S.C. 635i-5(c)) is amended to read as follows:

"(c) INCLUSION IN ANNUAL REPORT TO CONGRESS.— The Agency shall include in its annual report to Congress under section 8 a summary of its activities under subsections (a) and (b). The Board of Directors shall submit to the Congress a report, which shall be made publicly available on the Internet at the time of delivery—

"(1) that provides a detailed accounting of the methodology used to make greenhouse gas emissions project determinations; and

"(2) details the steps taken to ensure that the Environmental and Social Due Diligence Procedures and Guidelines of the Agency are consistent with—

"(A) reducing greenhouse gas emissions; and

"(B) operating consistently with the multilateral environmental agreements to which the United States is a party that are directly related to transactions in which the Agency is involved."

(d) FINANCING FOR RENEWABLE ENERGY, ENERGY EFFICIENCY, AND ENERGY STORAGE TECHNOLOGIES.— Section 2(b)(1)(K) of such Act (12 U.S.C. 635(b)(1)(K)) is amended by inserting ", energy efficiency, and energy storage. It shall be a goal of the Bank to ensure that not less than 5 percent of the applicable amount (as defined in section 6(a)(2)) is made available each fiscal year for the financing of renewable energy, energy efficiency, and energy storage technology exports" before the period.

(e) SENSE OF THE CONGRESS REGARDING AGENCY ACCOUNTABILITY.— It is the sense of the Congress that—

(1) the Board of Directors of the United States Export Finance Agency (in this section referred to as the "Agency") should, after a public consultation process, establish a formal, transparent, and independent accountability mechanism to review, investigate, offer independent dispute resolution to resolve, and publicly report on allegations by affected parties of any failure of the Agency to follow its own policies and procedures with regard to the environmental and social impacts of projects, and on situations where the Agency is alleged

to have failed in ensuring the borrower is fulfilling its obligations in financing agreements with respect to the policies and procedures;

(2) the accountability mechanism should be able to provide advice to management on policies, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of the environmental and social impacts of projects;

(3) in carrying out its mandate, the confidentiality of sensitive business information should be respected, as appropriate, and, in consultation with potentially impacted communities, project sponsors, Agency management, and other relevant parties, a flexible process should be followed aimed primarily at correcting project failures and achieving better results on the ground;

(4) the accountability mechanism should be independent of the line operations of management, and report its findings and recommendations directly to the Board of Directors of the Agency and annually to the Congress;

(5) the annual report of the Agency should include a detailed accounting of the activities of the accountability mechanism for the year covered by the report and the remedial actions taken by the Agency in response to the findings of the accountability mechanism;

(6) in coordination with the accountability mechanism, the Agency and relevant parties should engage in proactive outreach to communities impacted or potentially impacted by Agency financing and activities to provide information on the existence and availability of the accountability mechanism;

(7) the President of the Agency should, subject to the approval of the Board of Directors of the Agency, and consistent with applicable law, through an open and competitive process, including solicitation of input from relevant stakeholders, appoint a director of the accountability mechanism, who would be responsible for the day-to-day operations of the mechanism, and a panel of not less than 3 experts, including the director, who would also serve as chair of the panel; and

(8) The accountability mechanism director and members of the panel should not have been employed by the Agency within the 5 years preceding their appointment, and should be ineligible from future employment at the Agency.

Sec. 14. Reinsurance program

Section 51008 of the Fixing America's Surface Transportation Act (12 U.S.C. 635 note) is amended—

(1) in the section heading, by striking "Pilot";

(2) in subsection (a), by striking "pilot";

(3) in subsection (b)(1), by striking "\$1,000,000,000" and inserting "\$2,000,000,000"; and

(4) by striking subsections (c) through (e) and inserting the following:

"(c) **FACTORS FOR CONSIDERATION IN REINSURANCE POOLS.**— In implementing this section, the Agency shall, with respect to a reinsurance pool, pursue appropriate objectives to reduce risk and costs to the Agency, including by the following, to the extent practicable:

"(1) Ensuring a reasonable diversification of risks.

"(2) Including larger exposures where the possibility of default raises overall portfolio risk for the Agency.

"(3) Excluding transactions from the pool that are covered by first-loss protection.

"(4) Excluding transactions from the pool that are collateralized at a rate greater than standard market practice.

"(5) Diversifying reinsurance pools by industry and other appropriate factors.

"(6) Exploring different time periods of coverage.

"(7) Exploring both excess of loss structures on a per-borrower as well as an aggregate basis.

"(d) **BIENNIAL REPORTS.**— Not later than 1 year after the date of the enactment of this subsection, and every 2 years thereafter through 2029, the Agency shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report that contains an assessment of the use of the program carried out under subsection (a) since the most recent report under this subsection.

"(e) RULE OF CONSTRUCTION.— Nothing in this section shall be construed to limit any authority of the Agency described in section 2(a)(1) of the Export-Import Bank Act of 1945."

Sec. 15. Information technology systems

Section 3(j) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(j)) is amended—

(1) in paragraph (1), by striking all that precedes subparagraph (A) and inserting the following:

"(1) IN GENERAL.— Subject to paragraphs (3) and (4), the Agency may use an amount equal to 1.25 percent of the surplus of the Agency during fiscal years 2020 through 2029 to—"; and

(2) by striking paragraph (3) and inserting the following:

"(3) LIMITATION.— The aggregate of the amounts used in accordance with paragraph (1) for fiscal years 2020 through 2029 shall not exceed \$40,000,000."

Sec. 16. Administratively determined pay

Section 3 of the Export-Import Bank Act of 1945 (12 U.S.C. 635a), as amended by section 7(a) of this Act, is amended by adding at the end the following:

"(o) COMPENSATION OF EMPLOYEES.—

"(1) RATES OF PAY.— Subject to paragraph (2), the Board of Directors of the Agency, consistent with standards established by the Director of the Office of Minority and Women Inclusion, may set and adjust rates of basic pay for employees and new hires of the Agency without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that no employee of the Agency may receive a rate of basic pay that exceeds the rate for level III of the Executive Schedule under section 5313 of such title.

"(2) LIMITATIONS.— The Board of Directors of the Agency may not apply paragraph (1) to more than 35 employees at any point in time. Nothing in paragraph (1) may be construed to apply to any position of a confidential or policy-determining character that is excepted from the competitive service under section 3302 of title 5, United States Code, (pursuant to schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations) or to any position that would otherwise be subject to section 5311 or 5376 of title 5, United States Code."

