

111TH CONGRESS
2^D SESSION

H. R. 5394

To provide for the establishment of an American Enterprise Fund for Haiti and to ensure effective oversight of United States Government earthquake recovery and redevelopment activities in Haiti.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2010

Mr. MEEKS of New York (for himself, Ms. CLARKE, Mr. CLAY, Ms. MOORE of Wisconsin, Mr. GUTIERREZ, Mr. RUSH, Mr. BUTTERFIELD, Ms. FUDGE, and Mr. WATT) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To provide for the establishment of an American Enterprise Fund for Haiti and to ensure effective oversight of United States Government earthquake recovery and redevelopment activities in Haiti.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Haiti Private Sector Development Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMERICAN ENTERPRISE FUND FOR HAITI

Sec. 101. Designation of fund.

Sec. 102. Transfer of United States funds to Enterprise Fund; use of funds.

Sec. 103. Administration of funds.

Sec. 104. Audits, records, and reports.

Sec. 105. Nonapplicability of other laws.

Sec. 106. Authorization of appropriations.

TITLE II—HAITI ASSISTANCE OVERSIGHT SUMMARY REPORTS

Sec. 201. Annual summary reports.

Sec. 202. Submission and availability of reports.

Sec. 203. Treatment of sensitive material.

Sec. 204. Definition.

1 **TITLE I—AMERICAN**
2 **ENTERPRISE FUND FOR HAITI**

3 **SEC. 101. DESIGNATION OF FUND.**

4 (a) IN GENERAL.—The President is authorized to
5 designate as eligible to receive funds and support under
6 this title not more than 1 private, nonprofit organization
7 that the President determines has been established to
8 carry out the activities described in section 102. Such or-
9 ganization shall be known as the American Enterprise
10 Fund for Haiti (in this title referred to as the “Enterprise
11 Fund”).

12 (b) CONSULTATION WITH CONGRESS.—Before desig-
13 nating an organization under subsection (a), the President
14 shall consult with—

15 (1) the majority leader and the minority leader
16 of the Senate; and

17 (2) the Speaker and the minority leader of the
18 House of Representatives.

1 (c) BOARD OF DIRECTORS.—

2 (1) IN GENERAL.—The Enterprise Fund shall
3 be governed by a board of directors composed of pri-
4 vate citizens of the United States and private citi-
5 zens of Haiti who—

6 (A) have had successful business careers in
7 private equity, banking, or finance in developing
8 economies; or

9 (B) have experience similar to that of indi-
10 viduals who served on the board of directors of
11 a fund similar to the Enterprise Fund that—

12 (i) was established by the United
13 States Government on or after January 1,
14 1990; and

15 (ii) earned a positive return on the
16 funds under its control.

17 (2) MAJORITY OF UNITED STATES CITIZENS.—

18 A majority of the board of directors of the Enter-
19 prise Fund shall be United States citizens.

20 (3) RESPECT FOR DEMOCRACY AND FREE MAR-
21 KET.—Only Haitian citizens who demonstrate re-
22 spect for democracy and a free-market economy may
23 serve as members of the board of directors of the
24 Enterprise Fund.

1 (d) PRIVATE CHARACTER OF ENTERPRISE FUND.—
2 Nothing in this title shall be construed to make the Enter-
3 prise Fund an agency or establishment of the United
4 States Government, or to make the officers, employees, or
5 members of the board of directors of the Enterprise Fund
6 officers or employees of the United States for purposes
7 of title 5, United States Code.

8 (e) ELIGIBILITY OF ENTERPRISE FUND TO RECEIVE
9 UNITED STATES FUNDS.—A transfer of funds may be
10 made to the Enterprise Fund under section 102(a) only
11 if the Enterprise Fund agrees to comply with the require-
12 ments of this title.

13 **SEC. 102. TRANSFER OF UNITED STATES FUNDS TO ENTER-**
14 **PRISE FUND; USE OF FUNDS.**

15 (a) TRANSFERS TO ENTERPRISE FUND.—From
16 amounts made available under section 106, the Secretary
17 of the Treasury may transfer not more than \$100,000,000
18 to the Enterprise Fund for the Enterprise Fund to carry
19 out the activities described in this section and for the ad-
20 ministrative expenses of the Enterprise Fund.

21 (b) AUTHORIZED ACTIVITIES.—

22 (1) IN GENERAL.—The Enterprise Fund may
23 provide assistance only for programs and projects
24 that will promote—

1 (A) development of the Haitian private sec-
2 tor, including microbusinesses and small busi-
3 nesses, the agriculture, finance, energy, con-
4 struction, garment, and tourism industries, and
5 joint ventures with United States and Haitian
6 participants; and

7 (B) policies and practices conducive to pri-
8 vate sector development in Haiti, through loans,
9 equity investments, feasibility studies, grants,
10 technical assistance, training, insurance, guar-
11 antees, and other measures.

12 (2) PERCENTAGE OF FUNDS THAT MAY BE
13 USED FOR GRANTS.—Not more than 20 percent of
14 the funds transferred to the Enterprise Fund under
15 subsection (a) may be used for assistance in the
16 form of grants. Assistance provided under paragraph
17 (3)(D)(i) shall not be counted for purposes of the
18 preceding sentence.

19 (3) SPECIFIC ACTIVITIES.—

20 (A) INDIGENOUS CREDIT BUREAUS.—The
21 Enterprise Fund may make investments in and
22 grants for and otherwise encourage the estab-
23 lishment of consumer credit bureaus in Haiti.

24 (B) INFORMATION TECHNOLOGY INFRA-
25 STRUCTURE.—The Enterprise Fund may make

1 investments in and grants for projects providing
2 the modern information technology infrastruc-
3 ture needed for the delivery and monitoring of
4 services to economically vulnerable populations
5 in Haiti.

6 (C) MANAGEMENT AND TECHNICAL CAPAC-
7 ITY BUILDING.—The Enterprise Fund may
8 make investments in and grants for projects
9 providing management and technical capacity
10 training and development, which may include
11 training on effective management and govern-
12 ance for promoting private sector development.

13 (D) AMERICA FOR HAITIAN PRIVATE SEC-
14 TOR DEVELOPMENT FOUNDATION.—

15 (i) ESTABLISHMENT.—The Enterprise
16 Fund may use not more than \$5,000,000
17 of the funds transferred to it under sub-
18 section (a) to establish and provide support
19 for the America for Haitian Private Sector
20 Development Foundation (in this title re-
21 ferred to as the “Foundation”).

22 (ii) ACTIVITIES OF FOUNDATION.—

23 (I) RECRUITMENT.—The Foun-
24 dation shall develop programs to re-
25 cruit qualified individuals from the

1 United States, including the Haitian
2 diaspora in the United States, to go
3 to Haiti to provide technical expertise
4 to the Haitian government to support
5 public functions and to fill capacity
6 gaps in the Haitian government, espe-
7 cially at Haitian government min-
8 istries that oversee the private sector
9 and were disrupted by the earthquake
10 that occurred on January 12, 2010.
11 Such individuals may serve for short
12 or extended periods of time, not to ex-
13 ceed 2 years, as necessary to meet the
14 needs of the Haitian government. The
15 Foundation shall pay such individuals
16 such reasonable compensation for
17 their services as the Foundation con-
18 siders necessary to attract a sufficient
19 number of qualified individuals.

20 (II) ACTIVITIES AFTER WINDING
21 DOWN OF ENTERPRISE FUND.—The
22 Enterprise Fund shall ensure that the
23 Foundation is in a position to con-
24 tinue supporting the development and
25 good governance of the Haitian pri-

1 vate sector after the Enterprise Fund
2 is wound down and no longer receives
3 funding from the United States Gov-
4 ernment.

5 (c) FINANCIAL INSTRUMENTS FOR INDIVIDUAL IN-
6 VESTMENT IN HAITI.—The Enterprise Fund shall, if at
7 all practicable, establish financial instruments that will en-
8 able individuals to invest in the Haitian private sector.

9 (d) PRIORITY IN MAKING INVESTMENTS AND
10 GRANTS.—In making investments and grants under this
11 section, the Enterprise Fund shall give priority to indus-
12 tries targeted by the Haitian government for economic re-
13 covery and growth.

14 (e) MATTERS FOR CONSIDERATION IN CARRYING
15 OUT AUTHORIZED ACTIVITIES.—In carrying out activities
16 under this title, the Enterprise Fund shall take into ac-
17 count such considerations as internationally recognized
18 worker rights and other internationally recognized human
19 rights, environmental factors, United States economic and
20 employment effects, and the likelihood of commercial via-
21 bility of the activity receiving assistance from the Enter-
22 prise Fund.

23 **SEC. 103. ADMINISTRATION OF FUNDS.**

24 (a) RETENTION OF INVESTMENT EARNINGS.—

1 (1) RETENTION OF INTEREST.—The Enterprise
2 Fund may hold funds transferred to it under section
3 102(a) in interest-bearing accounts, prior to the dis-
4 bursement of such funds for the activities described
5 in section 102, and may retain for such purposes
6 any interest earned on such deposits without return-
7 ing such interest to the Treasury and without fur-
8 ther appropriation by Congress.

9 (2) USE OF INVESTMENT RETURNS AND OTHER
10 PAYMENTS.—The Enterprise Fund may use returns
11 on investments of the Enterprise Fund and other
12 payments to the Enterprise Fund to make invest-
13 ments in and grants for projects carried out under
14 section 102, without returning such returns or other
15 payments to the Treasury and without further ap-
16 propriation by Congress.

17 (b) USE OF UNITED STATES PRIVATE VENTURE
18 CAPITAL.—

19 (1) IN GENERAL.—In order to maximize the ef-
20 fectiveness of the activities of the Enterprise Fund,
21 the Enterprise Fund may conduct public offerings or
22 private placements for the purpose of soliciting and
23 accepting United States venture capital, which may
24 be used, separately or together with funds trans-
25 ferred to the Enterprise Fund under section 102(a),

1 for any lawful investment purpose that the board of
2 directors of the Enterprise Fund considers appro-
3 priate to carry out this title.

4 (2) DISTRIBUTIONS.—Financial returns on En-
5 terprise Fund investments that include a component
6 of private venture capital may be distributed, at
7 such times and in such amounts as the board of di-
8 rectors of the Enterprise Fund considers appro-
9 priate, to the investors of such capital.

10 (c) LIMITATION ON PAYMENTS TO ENTERPRISE
11 FUND PERSONNEL.—No funds of the Enterprise Fund
12 shall inure to the benefit of any board member, officer,
13 or employee of the Enterprise Fund, except as salary or
14 reasonable compensation for services.

15 (d) WINDING DOWN OF ENTERPRISE FUND; REPAY-
16 MENT OF FUNDS TO TREASURY.—

17 (1) IN GENERAL.—At such time as the board of
18 directors of the Enterprise Fund considers appro-
19 priate, but not later than December 31, 2025, the
20 Enterprise Fund shall—

21 (A) wind down its activities; and

22 (B) repay to the Treasury the full amount
23 of funds the Enterprise Fund received from the
24 United States Government throughout the ex-
25 istence of the Enterprise Fund.

1 (2) ENSURING ABILITY TO REPAY.—The Enter-
2 prise Fund shall make grants, investments, and pro-
3 vide other assistance under section 102 in a manner
4 that ensures the ability of the Enterprise Fund to
5 make the repayments to the Treasury required by
6 paragraph (1)(B).

7 **SEC. 104. AUDITS, RECORDS, AND REPORTS.**

8 (a) INDEPENDENT PRIVATE AUDITS.—The accounts
9 of the Enterprise Fund shall be audited annually in ac-
10 cordance with generally accepted auditing standards by
11 independent certified public accountants or independent li-
12 censed public accountants certified or licensed by a regu-
13 latory authority of a State or other political subdivision
14 of the United States. The report of an audit under this
15 subsection shall be included in the annual report under
16 subsection (d) for the year involved.

17 (b) GAO AUDITS.—With respect to any period during
18 which the Enterprise Fund is in possession of funds re-
19 ceived from the United States Government, the Comp-
20 troller General of the United States may audit the finan-
21 cial transactions of the Enterprise Fund in accordance
22 with such principles and procedures and under such rules
23 and regulations as the Comptroller General may prescribe.

24 (c) RECORDKEEPING REQUIREMENTS.—The Enter-
25 prise Fund shall ensure that—

1 (1) each recipient of assistance provided by the
2 Enterprise Fund under section 102 keeps—

3 (A) separate accounts with respect to such
4 assistance;

5 (B) such records as may be reasonably
6 necessary to disclose fully the amount and the
7 disposition by such recipient of the proceeds of
8 such assistance, the total cost of the project or
9 undertaking in connection with which such as-
10 sistance is given or used, and the amount and
11 nature of that portion of the cost of the project
12 or undertaking supplied by other sources; and

13 (C) such other records as will facilitate an
14 effective audit; and

15 (2) the Enterprise Fund, or an authorized rep-
16 resentative of the Enterprise Fund, has access for
17 the purpose of audit and examination to any books,
18 documents, papers, or records of the recipient that
19 are pertinent to assistance provided by the Enter-
20 prise Fund under section 102.

21 (d) ANNUAL REPORTS.—With respect to each year
22 during any part of which the full repayment to the Treas-
23 ury required by section 103(d)(1)(B) has not yet been
24 completed, the Enterprise Fund shall, not later than 120
25 days after the conclusion of such year, publish a report

1 that includes a comprehensive and detailed description of
2 the Enterprise Fund's operations, activities, financial con-
3 dition, and accomplishments under this title for such year.

4 **SEC. 105. NONAPPLICABILITY OF OTHER LAWS.**

5 Notwithstanding any other provision of law—

6 (1) funds may be transferred to the Enterprise
7 Fund under section 102(a) and used for the activi-
8 ties described in section 102; and

9 (2) executive branch agencies may conduct pro-
10 grams and activities and provide services in support
11 of the activities of the Enterprise Fund.

12 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

13 There is authorized to be appropriated to the Sec-
14 retary of the Treasury \$100,000,000 to carry out section
15 102(a), to remain available until expended or until the En-
16 terprise Fund winds down its activities, whichever occurs
17 earlier.

18 **TITLE II—HAITI ASSISTANCE**
19 **OVERSIGHT SUMMARY REPORTS**

20 **SEC. 201. ANNUAL SUMMARY REPORTS.**

21 (a) IN GENERAL.—Not later than January 31 of
22 each of the years 2011 through 2016, the President shall
23 submit to Congress a report that summarizes and analyzes
24 all reports available to the President that were prepared
25 for the purpose of providing oversight and evaluation of

1 earthquake recovery and redevelopment activities con-
2 ducted by United States Government agencies during the
3 preceding year.

4 (b) CONTENTS OF REPORT.—Each report submitted
5 under subsection (a) shall include—

6 (1) with respect to each United States Govern-
7 ment agency that conducted earthquake recovery
8 and redevelopment activities during the year covered
9 by the report, a statement of the obligations, out-
10 lays, and receipts of such agency related to such ac-
11 tivities during such year; and

12 (2) with respect to United States Government
13 earthquake recovery and redevelopment programs—

14 (A) an impact assessment of each such
15 program and of all such programs;

16 (B) an analysis of program conflicts;

17 (C) an assessment of areas for future im-
18 provement in individual programs, groups of
19 programs, or all such programs; and

20 (D) the proposed expenditures of each such
21 program for each of the 5 fiscal years following
22 the fiscal year in which the report is submitted.

23 (c) COORDINATION AND COOPERATION.—

24 (1) IN GENERAL.—In preparing a report under
25 subsection (a), the President shall coordinate with

1 the officials listed in paragraph (2), and such offi-
2 cials shall cooperate with the President in fulfilling
3 the requirements of such subsection.

4 (2) OFFICIALS LISTED.—The officials listed in
5 this paragraph are the following:

6 (A) The Inspector General of the Depart-
7 ment of Defense.

8 (B) The Inspector General of the Depart-
9 ment of State.

10 (C) The Inspector General of the Depart-
11 ment of the Treasury.

12 (D) The Inspector General of the United
13 States Agency for International Development.

14 (E) Any other officer or employee of the
15 United States Government primarily responsible
16 for oversight of an earthquake recovery or rede-
17 velopment program of the United States Gov-
18 ernment.

19 (3) COORDINATION WITH GAO.—The President
20 shall coordinate with the Comptroller General of the
21 United States in any oversight of earthquake recov-
22 ery and redevelopment undertaken by the Comp-
23 troller General, as the President and the Comptroller
24 General consider appropriate.

1 **SEC. 202. SUBMISSION AND AVAILABILITY OF REPORTS.**

2 (a) SUBMISSION TO EXECUTIVE BRANCH AGEN-
3 CIES.—When the President submits a report to Congress
4 under section 201(a), the President shall submit a copy
5 of such report to—

- 6 (1) the Secretary of Defense;
7 (2) the Secretary of State;
8 (3) the Secretary of the Treasury; and
9 (4) the Administrator of the United States
10 Agency for International Development.

11 (b) AVAILABILITY.—The President shall make the
12 unclassified portion of each report submitted under section
13 201(a) available—

- 14 (1) to the public in hard copy, upon request
15 and for a reasonable fee; and
16 (2) on an appropriate Internet Web site of an
17 agency or instrumentality of the United States Gov-
18 ernment.

19 **SEC. 203. TREATMENT OF SENSITIVE MATERIAL.**

20 (a) FORM OF REPORT.—The report required by sec-
21 tion 201(a) shall be submitted in unclassified form but
22 may include a classified annex.

23 (b) DISCLOSURE OF CERTAIN INFORMATION.—Noth-
24 ing in this title shall be construed to permit or require
25 the disclosure of information that is—

1 (1) specifically prohibited from disclosure by
2 any other provision of law;

3 (2) specifically required by Executive order to
4 be protected from disclosure in the interest of na-
5 tional defense or national security or in the conduct
6 of foreign affairs; or

7 (3) a part of an ongoing criminal investigation.

8 **SEC. 204. DEFINITION.**

9 In this title, the term “earthquake recovery and rede-
10 velopment” means assistance provided to the Haitian gov-
11 ernment, Haitian private sector entities, and the Haitian
12 people to restore and strengthen the functioning of the
13 government, the economic system, and society after the
14 earthquake that occurred on January 12, 2010.

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